SUPREME COURT OF THE UNITED STATES.

No. 39.

MOSES E. LEVY, APPELLANT,

VERSUS

FERNANDO DE LA MAZA ARREDONDO'S ADM'R AND JUAN DE ENTRALGO.

APPEAL FROM THE COURT OF APPEALS OF FLORIDA.

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IN THE SUPERIOR COURT FOR THE *Eastern District of Florida, in Chancery.*

Be it remembered that, on the eleventh day of November, in the year of our Lord one thousand eight hundred and twenty-six, Moses E. Levy, by Davis Floyd and John Drysdale, his solicitors, brought and filed in the Clerk's office of the said Court, his bill in chancery against Fernando de la Maza Arredondo, and Juan de Entralgo; which said bill is in the words and figures following, to wit:

To the honorable Joseph L. Smith, judge of the Superior Court for the Eastern District of Florida, in Chancery setting:

Humbly complaining, sheweth unto your honor, your orator, Moses E. Levy, of the county of Alachua in the said district, that, sometime in the year eighteen hundred and twenty, your orator, through Messrs. Hernandez and Chevetean, merchants of Havana, purchased from Don Fernando de la Maza Arredondo, also of the city of Havana, two certain tracts of land, one about eight miles above Lake George, on the St. Johns river, containing fourteen thousand five hundred acres, the other containing thirty-eight thousand four hundred acres, on both sides (as represented) of Alligator creek, for the sum of twenty-five thousand dollars, paid to the said F. M. Arredondo, as will more fully appear by the deed from Don F. M. Arredondo to Messrs. Hernandez and Chevetean, and the deed from Hernandez and Chevetean to your orator, which are hereby referred to and made a part of this bill.

And your orator further sheweth, that the said F. M. Arredondo, the elder, expressly stated and represented to your orator, and to Messrs. Hernandez & Chevetean, that the title to the tract of land on Alligator creek, was in the name of F. M. Arredondo, junior, and that he would procure a conveyance from him to your orator in two months, and entered into a written contract to that effect, which will more fully appear by the said written contract hereby referred to and made a part of this bill.

And your orator further sheweth, that before, and at the time of the purchase as aforesaid, the said F. M. Arredondo presented a plat and certificate of the land aforesaid, on a creek represented to be in this province, called Alligator creek, purporting to have been made by Andres Burgevin, by which the greater part of the land was represented as hammock land, which will more fully appear by an inspection of the plat and certificate of the survey, hereby referred to and made a part of this bill.

And your orator further sheweth, that the said F. M. Arredondo, positively asserted and stated the land to be of the quality represented by the plat, and that the land had been regularly surveyed, as shewn by the plat, and that he had good and sufficient authority in law, to make, or cause the title aforesaid to be made, to your orator. Whereas your orator alleges and charges, that the said F. M. Arre-

dondo well knew, at the time, that no survey had ever been made at all; that the only survey which they have seen, was taken from the pocket of an individual in the neighborhood of Alachua, who had been killed by the Indians; after which, a concession was made to correspond to the plat so as aforesaid obtained.

And your orator further sheweth, and particularly charges that the said tract of land at Alligator creek, is altogether imaginary, no such tract of land, or any creek answering to the plat, is to be found in the territory, nor was any such survey ever made, nor has the said F. M. Arredondo procurred any title whatever to be made, other than as aforesaid.

And your orator further sheweth that, pursuant to his original contract, he has paid the whole of the purchase money at the time of the purchase, or shortly after, except ten thousand eight hundred dollars, for which he gave his obligation to pay in one and two years after the cession of the Floridas to the United States; that the first instalment of five thousand four hundred dollars was duly and punctually paid, and a considerable part of the last instalment of five thousand four hundred dollars was also paid to F. M. Arredondo, junior, the acting agent of Arredondo & Son, and of F. M. Arredondo, senior, then residing at St. Augustine, sundry by sums amounting to a much larger sum than the amount of the said last instalment, for the purchase of the said Alligator tract of land; and when he applied to F. M. Arredondo, junior, for his bonds, he was informed that his bonds were in the Havana, and would be given up; and in order to secure your orator the better, in the giving up the aforesaid obligations, and for the further security of the one half of the Alligator tract of land, which cannot be found as above stated, F. M. Arredondo, junior, conveyed the one eighth of the Alachua tract of land to your orator, named in the deed heretofore referred to, and made a part of this bill.

And your orator further sheweth, that the said F. M. Arredondo, and Arredondo and Son, are justly indebted to your orator in the sum of four thousand six hundred dollars over and above the amount of the last instalment, so as aforesaid, for their proportion of the expenses of the settlement of the Alachua grant, which sum their agent Joseph M. Arredondo, deceased, in his life time, promised your orator that they should pay.

And your orator further sheweth, that the said F. M. Arredondo, well knowing the premises, on the —— day of ——, transferred the obligation of your orator for the last instalment, to wit, for five thousand four hundred dollars, to one John Entralgo, who well knew the premises, and who was, as your orator has been told by the agent of said F. M. Arredondo, and verily believes, equally concerned in the obtaining of the original concession, notwithstanding it was taken out in the name of F. M. Arredondo, junior, and entitled to his equal share of the proceeds of the sale of said Alligator tract of land, and did receive, as a part of his share, the aforesaid obligation of your orator, and has commenced a suit at law to recover the same, and will obtain a judgment and execution against your orator, notwithstanding

your orator has overpaid the said note to the said F. M. Arredondo, as aforesaid, without the intervention of this honorable court. But now, so it is, may it please your honor, that the said F. M. Arredondo, combining and confederating with F. M. Arredondo, junior, and the said John de Entralgo, all of whom your orator prays may be made defendants to this bill, and certain other persons to your orator unknown, who, when discovered, he prays may also be made defendants, with apt words, to charge them in order the better to carry on their fraudulent design in procuring the concession aforesaid, and in presenting the feigned and forged plat and certificate as aforesaid, and to collect the aforesaid sum of five thousand four hundred dollars from your orator, and have agreed amongst themselves that the said John de Entralgo was to prosecute your orator for the aforesaid sum of money, notwithstanding that they all well knew, that they never had any such land as described as the Alligator tract of land; and notwithstanding they all well knew that the whole amount of the purchase money had been punctually paid by your orator, under a full persuasion that they would convey to your orator the land, according to the original contract all of which actings and doings are contrary to equity and good conscience, and tend manifestly to injure and oppress your orator; and for as much as your orator is without remedy and common law, and releivable only in this honorable court, where matters of fraud are alone cognizable—

To the end, therefore, that the said F. M. Arredondo, junior, and John de Entralgo, and their confederates, when discovered, may full, true, direct, and perfect answer make, to all and singular the premises, as fully and particularly as if the same were herein repeated, and they thereunto again interrogated, and more especially that they may set forth and discover whether your orator did not, through Messrs. Hernandez and Chevetean, purchase of them two tracts of land, that is to say, the one lying on the St. Johns' river, containing fourteen hundred acres, the other, as represented, containing thirty-eight thousand acres, lying on a creek called Alligator creek, at and for the price of twenty-five thousand dollars; whether they did not represent the survey of the said Alligator tract to be genuine, and the land of the quality represented on the plat, to wit, the greatest part good hammock land; and whether in fact, the survey was not copied from one found in the possession of a person who was killed near Alachua; and whether they did not apply to the Governor for a concession to correspond to the plat thus found; and whether they did not know at the time, that there was no such place, as the one described in the territory; whether the whole of the purchase money has not been paid by your orator, with the exception of the balance due on the note for five thousand four hundred dollars, which has been sued upon; and whether the greater part of the said last mentioned note, was not received by F. M. Arredondo, as the agent of F. M. Arredondo, at St. Augustine; and whether after the payment aforesaid, the said note was not assigned by the said F. M. Arredondo, to John de Entralgo, in part of his proportion of the original purchase money; and whether the said John de Entralgo was not

equally interested in the original concession and sale of the tract of land to your orator, and if not, to what extent was he interested; whether there is any such land or place as described in the plat aforesaid, and where it is to be found; and whether they have made a good and sufficient legal title to the aforesaid; and whether they did not, at the time of the contract and sale, know that they never would be able to make a good and lawful title to the same.

And your orator prays that the said defendants may be enjoined from proceeding further at law, to recover the said five thousand four hundred dollars; and that, by a decree of this honorable court, they may be compelled to refund to your orator the aforesaid sum of nineteen thousand six hundred dollars and damages for the imposition thus practised upon him; and that your honor would grant him such other and further relief in the premises, as to your honor shall seem just and agreeable to equity and good conscience.

May it please your honor to grant to your orator, the territory's most gracious writ of subpœna to be directed to the said F. M. Arredondo, F. M. Arredondo, junior, and Juan de Entralgo, thereby commanding them, at a certain day, and under a certain pain, therein to be inserted, personally to be, and appear before your honor in this honorable court, then and there to answer the premises, and to stand to, and abide such order and decree therein, as to your honor shall seem agreeable to equity and good conscience; and your orator will ever pray, &c.

FLOYD & DRISDALE,
Solicitors for Complainant.

In the Superior Court of the Eastern District of Florida.

MOSES E. LEVY, *Complainant*,
vs.
JUAN DE ENTRALGO, and
FERNANDO M. ARREDONDO, Senr. *Defendants.*
} In Chancery.

Copy of the order of publication filed herein.

The complainant having filed his bill of complaint against the above named defendants in this court, and it appearing by affidavit duly made, that the said defendants reside out of this district, and in the island of Cuba; it is therefore ordered, that the said defendants do appear and answer the said bill of the complainant on or before the first Monday of August next, otherwise the said bill will be taken *pro confesso*. Dated St. Augustine, 23rd Dec. 1826.

JOS. L. SMITH, *Judge.*

And, afterwards, before the Superior Court for the Eastern District of Florida, sitting as a court of chancery, holden at the court house in the city of St. Augustine, at the term of March, in the year of our Lord one thousand eight hundred and twenty-nine, to which term this cause had come by regular continuances, to wit, on Monday the first day of said term, and the second of said month, the following entry of record was made in this case, to wit:

MOSES E. LEVY,
vs.
JUAN DE ENTRALGO, and
FERNANDO M. ARREDONDO Senr. } In Chancery.

Upon motion of the complainants solicitor, it was alleged, that by an order of the judge of this court, of the 23d December, 1826, it was ordered that the said defendants should appear and answer the complainant's bill on or before the first Monday of August then next, otherwise the said bill would be taken *pro confesso* against them; and it was further alledged and proved, that the said order had been published six months in the East Florida Herald, (published in St. Augustine,) pursuant to the provisions of the act of the Legislative Council of this territory, in such case made and provided; notwithstanding which, the defendants have not appeared to the complainant's bill. It was, therefore, prayed that the said bill might be taken *pro confesso* against the said defendants, which is ordered accordingly.

And, afterwards, before the Superior Court for the Eastern District of Florida, sitting as a court of chancery, holden at the court house in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and twenty-nine, to which term this cause had come by regular continuance, to wit, on Monday the third day of said term, and the twentieth of said month, the following entry of record was made in this case, to wit:

MOSES E. LEVY, *Complainant*,
vs.
JUAN DE ENTRALGO and
FERNANDO M. ARREDONDO, Senr., *Defendants*. } In Chancery.

This day came the parties by their solicitors, and the defendant, Juan de Entralgo, by his solicitor, moved the court for leave to file his demurrer to the said complainant's bill, which motion, after argument, was sustained, and leave is given the said defendant, Juan de Entralgo, to file his demurrer on the payment of the costs.

And, afterwards, to wit, on the same day and year last aforesaid, the said defendant, Juan de Entralgo, by John Rodman, his solicitor, brought and filed in the clerks office, aforesaid, his demurrer to the said bill, which said demurrer, is in the words and figures following, to wit:

JUAN DE ENTRALGO, impleaded with
FERNANDO DE LA MAZA ARREDONDO, Senior,
Ads.
MOSES E. LEVY. } In Chancery.

The demurrer of Juan de Entralgo to the bill of complaint of Moses E. Levy against the said Juan de Entralgo and Fernando de la Maza Arredondo.

The said Juan de Entralgo by protestation, not confessing nor acknowledging all or any of the matters or things in the complainant's

said bill of complaint to be true, in such sort, manner, and form, as the same are therein and thereby set forth and alleged, for answer to the said complainant's bill of complaint, the said defendant, doth demur, and for causes of demurrer, saith:

1. That it appears of the complainant's own showing that a suit at common law is now pending in this court, brought by this defendant, as indorsee of a certain promissory note, (called by the said complainant, in his said bill, an obligation,) against the said complainant as drawer of the same; that, in and by the said bill of complaint, the said complainant seeks to discover the tittle of this defendant in and to the said promissory note, as indorsee thereof, and to impeach the consideration on which the said note was given, and alleges divers matters and things in relation to certain pretended dealings and transactions between him, the said complainant, and the said Fernando de la Maza Arredondo, senior, and Fernando M. Arredondo, junior, and Joseph M. Arredondo, concerning the sale of certain tracts of land in East Florida, by the said Fernando de la Maza Arredondo, senior, to him the said complainant, and certain advances made by him, the said complainant, on account of the Alachua grant of land; in which dealings and transactions, it is not pretended that this defendant was a party; and it is not alleged and charged in the said bill of complaint, that the said promissory note was transferred by indorsement to this defendant after it became due and payable. Therefore, inasmuch as by the law of the land touching and concerning the indorsement and negociation of promissory notes, this defendant, as the holder of the said promissory note, had a full and perfect, legal, and equitable, title in and to the same, and is not subject to any equities (if any in fact existed) between the said complainant and the said Fernando de la Maza Arredondo, senior, he the said defendant is not bound by a bill of discovery in equity to disclose the nature and extent of that title.

2. That the said complainant's said bill, (in case the allegations contained therein were true, which this defendant doth in no sort admit,) contains not any matter of equity, whereon this court can ground any decree, or give the complainant any relief or assistance, as against him, this defendant, or against the other defendant in the said bill of complaint, against whom no relief whatever is prayed for, except as to the matters not cognizable in a court of equity.

3. That the said complainant in his said bill of complaint, does not pray that certain conveyances of land made to him by the said Fernando de la Maza Arredondo, and by Fernando M Arredondo, junior, may be annulled and set aside, nor that the contract alledged to have been made for a conveyance of a certain tract of land on Alligator creek should be rescinded and annulled, nor does the said complainant in his said bill of complaint make any offer to re-convey to the said Fernando de la Maza Arredondo, senior, or Fernando M. Arredondo, junior, the one-eighth part of the Alachua grant of land, which he, the said complainant, alleges in his said bill was made to him, as security, for the deficiency of one-half of the tract of land on Alligator creek, the sale of which has been fraudulently made to him.

4. That the said complainant in his said bill of complaint, not having shown himself entitled to any relief, is not entitled to any discovery.

5. That the principal, in the fraud charged in the said bill of complaint, to wit, the said Fernando de la Maza Arredondo, senior, having been released from the fraud, if any existed, by the said complainant, in virtue of the conveyance of the one-eighth part of the Alachua grant of land, in lieu of the deficiency of the tract on Alligator creek, the said defendant, Juan de Entralgo, who could only, in any case, have been secondarily liable on account of said alleded fraud, cannot be proceeded against.

6. That it appears in and by the said complainant's bill of complaint, that Fernando M. Arredondo, junior, was materially interested in the various matters and things alleged in said bill of complaint, and was made a party defendant to the same, but that no process of subpœna, requiring the said Fernando M. Arredondo, junior, to appear and answer said bill, has ever been issued, or any notice by publication give to the said Fernando M. Arredondo, junior, of the filling of said bill; and it also appears in and by the said bill of complaint, that Joseph M. Arredondo was materially interested in the matters and things charged in said bill, touching and concerning the Alachua grant of land, on account of a large sum of money alleged to have been expended by the said complainant on account of the said F. M. Arredondo, and Arredondo and Son, the said Joseph M. Arredondo, being at that time a partner in the firm of F. M. Arredondo & Son, and one of the original grantees of the Alachua grant; and it further appears by the said complainant's bill of complaint, that the said Joseph M. Arredondo is dead, yet the representative of the said Joseph M. Arredondo is not made a party defendant in said bill of complaint.

7. That a certain conveyance from Hernandez and Chevitean, made a part of said bill of complaint, is not set forth, or any exhibits thereof made; and likewise a certain contract between the said complainant and Fernando M. Arredondo, senior, is made a part of said bill, and not set forth, or any exhibit thereof made; and also a certain conveyance of one-eighth part of the Alachua grant of land made to the said complainant, is not set forth, or any exhibit thereof made: Wherefore, and forasmuch as the complainant's said bill of complaint doth not contain (as this defendant is advised) any matter of equity sufficient to establish any right or demand against this defendant, nor to draw him in a suit in equity in this honorable court, touching the matter complained of in the complainant's said bill of complaint, and also for many other errors and imperfections in the said complainant's said bill of complaint, this defendant doth demur in law thereto, and humbly craves the judgment of this honorable court, whereas he ought to make answer to the said bill of complaint, and humbly prays to be hence dismissed with his costs in his behalf wrongfully sustained.

J RODMAN,

Solicitor and Council for the Defendant,

J. DE ENTRALGO.

And, afterwards, at the same term of July, in the year of our Lord, one thousand eight hundred and twenty-nine, to wit: on Tuesday the fourth day of said term, and the twenty-first of said month, the following entry of record was made in this cause, to wit:

MOSES E. LEVY. *Complainant,*
vs.
JUAN DE ENTRALGO, and
FERNANDO M. ARREDONDO, Senior, *Defendants.*

This day came the parties by their solicitors, and the demurrer of the defendant, Juan de Entralgo, to the complainant's bill, was duly argued but the court not being sufficiently advised of, and concerning the premises, took time to consider.

And, afterwards, at the same term of July in the year of our Lord, one thousand eight hundred and twenty-nine, to wit: On Monday the eighth day of said term, and the third day of August, the following entry of record was made in this cause, to wit:

MOSES E. LEVY, *Complainant,*
vs.
JUAN DE ENTRALGO, and
FERNANDO M. ARREDONDO, Senior, *Defendants.*

This day came as well the complainant by his solicitor, as the said defendant, Juan de Entralgo by his solicitor, and the court not yet having given any decision on the said Entralgo's demurrer heretofore filed herein, but having intimated an opinion that the said bill could not be sustained, the said complainant, by his solicitor thereupon, moved the court for leave to amend his said bill of complaint, which said motion, after argument of counsel, was sustained, andleave is given the said complainant to amend his said bill on the payment of costs.

And, afterwards, to wit, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and twenty-nine, the said complainant by his solicitor, John Drysdale, brought and filed in the clerk's office, aforesaid, his amended bill; which said amended bill is in the words and figures following, to wit:

To the Honorable Joseph L. Smith, Judge of the Superior Court, for the Eastern District of Florida, in Chancery, setting:

Humbly complaining, sheweth unto your honor, your orator, Moses E. Levy, of the county of Alachua, in said district, on the third day of August, one thousand eight hundred and twenty, through Messrs. Hernandez and Chevitean, merchants of Havana, in the island of Cuba, his agents and trustees in that behalf, purchased at Havana, aforesaid, from Don Fernando de la Maza Arredondo, senior, also of the said city of Havana, two certain tracts of land represented by the said Fernando de la Maza Arredondo, senior, to be situated in east Florida, that is to say, one of them about eight miles above Lake George, on the St. John's river, containing 14,500 acres, the other

containing 38,400, on both sides of Alligator creek, for the sum of twenty-five thousand dollars paid, at the time of said purchase, by your orator, through the said Hernandez and Chevitean, his agents and trustees, as aforesaid, to the said Fernando M. Arredondo, senior, for the said two tracts of land, and for the further sum of ten thousand eight hundred and seventy-five dollars, for the said two tracts of land, to be paid by your orator, to the said Arredondo upon the contingency of the United States taking possession of East Florida; and in one and two years after that event, and for the securing of the payment of the said sum of ten thousand eight hundred and seventy five dollars, your orator gave the said Fernando M. Arredondo, senior, his promissory note, or memorandum in writing, signed by your orator, and bearing date the aforesaid third day of August, one thousand eight hundred and twenty.

And your orator further shows unto your honor, that of the aforesaid aggregate sum of thirty-five thousand eight hundred and seventy-five dollars, so as aforesaid paid, and stipulated to be paid, for the said two tracts of land, twenty-five thousand dollars were the consideration and purchase money of the aforesaid tract, represented as containing 38,400 acres, and as situated on the Alligator creek, and ten thousand eight hundred and seventy-five dollars were the consideration and purchase money of the tract represented to contain 14,500 acres, and as situated on the St. Johns river; that of the twenty-five thousand paid down to the said Fernando M. Arredondo, senr., at the time of the said purchase as aforesaid, twenty thousand dollars were paid on account of, and for the said Alligator creek tract of land, and five thousand dollars for, and on account of the St. Johns tract of land. Your orator further shows unto your honor, that the said Fernando M. Arredondo, senr., alleged before and at the time of the said purchase, that the said Alligator creek tract of land had been granted to his son Fernando de la Maza Arredondo, junior, and that the title thereto was in him and not in the said Fernando M. Arredondo, senior, and that the said Fernando M. Arredondo, senior, stipulated and agreed and entered into personal warranty and obligation, that he, the said Fernando M. Arredondo, senr., would, within the peremptory term of two months from the time of the said purchase, procure from his said son, and produce to the aforenamed Hernandez and Chevitean, a power of attorney authorizing and confirming the sale to your orator, of the said Alligator creek tract of land: And the said Fernando M. Arredondo, senr., by a bill of sale or conveyance executed in Havana, aforesaid, and bearing date the aforesaid third day of August, 1820, and containing the aforesaid stipulation on his part, transferred, and conveyed the said two tracts of land to the said Hernandez and Chevitean, the agents and trustees of your orator as aforesaid. And your orator further shews unto your honor, that the said Fernando M. Arredondo, senr., well knew before and at the time of the said purchase and transfer of the said lands, that the said Hernandez and Chevitean had no personal interest in the said lands or in the terms of their purchase; and that so far as they had any concern in the negotiation

for the said purchase, they acted as the agents of your orator; and that, in taking the conveyance of the said lands in their name, they acted at his request as his trustees; that the said purchase was made exclusively for and on account of your orator; that the whole of the purchase money paid, and to be paid, was paid, and to be paid, by your orator; and that the aforesaid conveyance of the said lands was made in trust for the sole use and benefit of your orator.

And your orator shews unto your honor, that the legal titles to the said lands was, after the said purchase, transferred to, and vested in, your orator, by conveyances from the said Hernandez and Chevitean to one ——— Cohen, and from the said Cohen to your orator, and the same will more fully and at large appear, reference being had to the said conveyances annexed hereto, as exhibits A and B.

And your orator expressly avers and charges that the said Fernando M. Arredondo, senr., well knew before and at all the times of the treating for the sale and purchase of the said lands between him and your orator, and at the time of the consummation thereof, by the purchase and transfer of the same as aforesaid, that neither your orator, or his said agents Hernandez and Chevitean, had never been in Florida, and that they were perfect strangers to the face of the country and the general character and quality of the lands; and that your orator depended entirely upon the representations and description of him, the said Fernando M. Arredondo, senr., in relation to the locality, value, and quality, of the said Alligator creek tract of land. And your orator avers, and further expressly charges, that the said Fernando M. Arredondo, senr., for the purpose of inducing your orator to purchase the said Alligator creek tract of land, and under a full knowledge, as aforesaid, that your orator relied on his representations in that respect, and that your orator had no means whereby he could detect their falsity, or obtain information in regard to the said land, independently of the said Fernando M. Arredondo, did during all the times in which your orator and his agents, the said Hernandez and Chevitean, was treating and negociating with him for the purchase for the said two tracts of land, and up to, and at the time, at which the aforesaid conveyance, whereby they were conveyed as aforesaid, was executed, represent, assert, and affirm to your orator, and his said agents, that the said tract of land represented as containing 38,400 acres, was, as to upwards of one-half thereof, land of the very first quality, situated on both sides of a certain creek, called Alligator creek, which was represented as rising or beginning at an Indian town or settlement, called Alligator town, and as running in a westwardly direction, and emptying into the Suawanee river; that the said Indian settlement, called Alligator town, was situated about forty miles from a place in Alachua, called Pens, (or Paynes) town, and about eighty miles distant from a place on the St. Johns river, called Buena Vista, in a northwestwardly direction: And that the said tract of land began at about seven miles west from the said Alligator town, and extending on both sides of the said creek, called Alligator creek, twelve miles, and was in breadth five miles.

And your orator avers, and expressly charges that the said Fer-

nando M. Arredondo, senior, during all the time of the negotiation for the purchase of the said land, and up to, and at the time the said negotiation was concluded by the said purchase, and for the purpose of inducing your orator to purchase the said Alligator creek tract, constantly and positively represented, affirmed, and asserted, that the said tract of land corresponded in all respects in regard to the quantity, quality, description, and location thereof, to and with a certain plat which was, during the said negotiation, exhibited by the said Fernando M. Arredondo, junior, to your orator, and his said agents; and which plat, so exhibited by the said Fernando M. Arredondo, senior, was, by him, the said Fernando M. Arredondo, senr., during all the said negotiation, and up to, and at the time of the said purchase, pretended, affirmed, represented, and asserted, to be a true and faithful copy of a certain original and regular official plat of the survey of the said Alligator creek land; that the said tract of land had been regularly granted by the Spanish Government to his son, the aforenamed Fernando M. Arredondo, junior; that it had been regularly surveyed and located under the authority of the Spanish Government, and that the plat exhibited by him as aforesaid to your orator, and his aforesaid agents, was a true copy of the original official plat of the said land; and your orator avers that the said copy of the said official plat, (alleged to be) which was exhibited as aforesaid to your orator, and his said agents, was, by the said Fernando M. Arredondo, senr., annexed to the aforesaid bill of sale or conveyance of the said two tracts of land, executed as aforesaid, on the said purchase by the said Fernando M. Arredondo, bearing date the aforesaid third day of August, 1820, and in, therein and thereby expressly referred to, and made a part of the said instrument of conveyance, as containing and shewing a true and accurate description of the said Alligator creek tract of land, and as containing and shewing, so far as it went, the description by which the said tract of land was sold by the said Fernando M. Arredondo, senior, to your orator.

And your orator further shews unto your honor, that believing and relying upon the aforesaid representations, affirmations, and assertions, of the said Fernando M. Arredondo, senr., he, on the twenty-third day of August, 1820, concluded the purchase of the said lands, and made the payment of twenty-five thousand dollars, and entered into the stipulation for the payment of the farther sum of ten thousand eight hundred and seventy-five dollars, by giving his promissory note to the said Fernando M. Arredondo, senr., as has been hereinbefore alleged and set forth. And your orator prays leave for the purpose of aiding him in the proof of the aforesaid allegations, matters, and things, to refer, on the hearing of this cause, to a regular authenticated copy of the aforesaid bill of sale, or conveyance, bearing date the aforesaid 23d of August, 1820, and to the authenticated copy of the aforesaid plat, so as aforesaid, annexed to the original bill of sale or conveyance of the said last mentioned date; which said original bill of sale and the plat thereto annexed, your orator avers are out of the power and beyond the control of your orator, and cannot, therefore, be by him produced, the same being on file and of record in the pro-

per public office in Havana aforesaid, where the said purchase took place, and the said bill of sale was executed, the law, custom, and practice in the said city of Havana, requiring on occasion of the kind the execution of the original instrument of transfer or conveyance in a certain public office in which it is ever afterwards retained as a record of the said office, and of which the party or parties interested are entitled to an office copy, or a copy authenticated by the keeper of said office, which, according to the Spanish regulations, laws, and customs is, in all respects, equivalent to the original, and as evidence, is proof *per se*. And your orator annexes hereto, as an exhibit in this cause, the aforesaid authenticated copy of the said bill of sale and plat, that it may serve and avail him as far as in law and justice it ought to do.

And your orator further shews unto your honor that, notwithstanding the aforesaid various representations, assertions, and affirmations, so made as aforesaid, by the said Fernando M. Arredondo, senr., in regard to the said 38,400 acre tract of land, so as aforesaid, sold by the said Fernando M. Arredondo, senr., to your orator, as being situated on the aforesaid creek, called Alligator creek, and in that part of East Florida, so as aforesaid, described by him ; and, notwithstanding the aforesaid representations and affirmations, so as aforesaid, made by the aforesaid Fernando M. Arredondo, senr., in regard to the survey of the said land and the aforesaid plat, so as aforesaid, exhibited by him to your orator, and his agents, as aforesaid, the fact is as your orator believes, and so your orator expressly charges, that "the said tract of land at Alligator creek, is altogether imaginary, that no such tract of land or any creek, answering to the creek represented by the said plat," or answering to the representations of the said Fernando M. Arredondo, senr., relating thereto, "is to be found in the territory, nor was any such survey ever made" as that represented by the said Fernando M. Arredondo, senr., to have been made of the said Alligator creek land. On the contrary, your orator charges the truth to be, that the said Fernando M. Arredondo, senr., well knew at all the times he made the aforesaid representations and affirmations, as to the quantity, quality, and locality, of the said pretended land on the said pretended creek, pretended to be called Alligator creek, and as to the survey thereof, that there was no such creek as that called Alligator creek, and no such tract of land as that described by him to be situated on the said pretended creek, and that the survey by him pretended to have been made as aforesaid, never had in fact been made. And your orator expressly avers and charges, that the aforesaid tract or parcel of land so alleged and represented, as aforesaid, by the said Fernando M. Arredondo, senr., to be situated on a creek, called Alligator creek, has no existence ; that your orator has resorted to every reasonable means in his power, to discover the said tract of land, but without success ; that he has, at great expense, employed different persons to explore that part of the country in which the said land was represented as aforesaid to be, and he has ascertained from the information of the persons so employed by him, and from various other sources, that there is no such

creek as that on which the said land is represented to be situated, nor any land in the part of the country in which it is represented to be situated, answering in quantity, quality, or in any other respect, the description of the 38,400 acre tract, so sold, as aforesaid, by the said Fernando M. Arredondo to your orator. And your orator also expressly avers and charges, that, in making the purchase of the said Alligator creek lands, he acted on a full faith and reliance of the truth of the aforesaid ropresentations of the said Fernando M. Arredondo, senr., in regard to the location, quantity, quality, and description, of the said land, and in regard to the regularity of the grant thereof, and the alleged survey thereof, and the regularity and genuineness, and authenticity of the aforesaid plat, of which the plat so exhibited, as aforesaid, to your orator, was alledged, and pretended to be a copy; and that your orator was induced by them to make the aforesaid purchase of the said pretended Alligator creek tract of land: and your orator also charges, that the said Fernando M. Arredondo, senior, well knew before, and at the time of the said purchase, and during the whole negotiation therefor, that your orator so relied on the said representations, and that he was induced by them to make the said purchase. Yet your orator avers that the said representations, affirmations and assertions, were altogether false and unfounded, and he has good reason to believe, and he charges and avers, that the said Fernando M. Arredondo, senior, well knew them to be so at the time he made them.

Your orator further shews, that at the time he made the said purchase, he was engaged in a very profitable business, as a merchant in Havana, aforesaid, and he was induced solely by the purchase of the said lands, to abandon his mercantile pursuits; and, in consequence of the non-existencc of the said Alligator ereek land, he has been greatly damnified.

And your orator further shews unto your honor, that indefinite and vague reports had, by the month of July, 1824, reached your orator, which created a doubt in his mind as to the actual survey and location of the said Alligator creek land; and, with a view of guarding and securing himself against the possible truth of the said reports, he entered into an arrangement in that month with Joseph de la Maza Arredondo, who was then the authorized and acting agent, and attorney in fact, of the said Fernando M. Arredondo, senior, for an exchange of a moiety of the said Alligator creek land, for an equal quantity of land in Alachua in said territory, owned, or alleged by them to be owned, by the said Fernando M. Arredondo, senior, and the said Joseph M. Arredondo; and the said exchange which was induced and made on the part of the said Joseph M. Arredondo, as well as your orator, for the express purpose of securing your orator, by putting the said Alachua lands in the place and stead of the moiety of the Alligator creek lands, was effected by a certain deed of indenture, bearing date the 13th July, 1824, between the said Fernando M. Arredondo, senior, and Joseph M. Arredondo, of the one part, and your orator of the other.

Your orator further avers, that though at the time of the execution

of the said indenture he has no information as to the non-existence of the Alligator creek land, which was certain or definite in its nature, or which could be relied on as authentic, he was yet extremely desirous that he should be relieved from all the anxiety and hazard on that point, by an exchange of the whole of the said Alligator creek land, for an equal quantity of the Alachua land; and he urged an exchange to that extent upon the said Joseph M. Arredondo, but without effect. Your orator further shows, that the said exchange was made at St. Augustine, in this territory, where the said Joseph M. Arredondo was on a visit; and the said Joseph M. Arredondo and your orator, concurred at this time, in employing one Reuben Charles to endeavour to discover the said Alligator creek land, and so ascertain the correctness of the above mentioned reports in regard to it; immediately after which, both the said Joseph M. Arredondo and your orator left St. Augustine for New York, where they again met in the month of September or October, 1824; that while they were at New York, information was received by them from the said Reuben Charles, that he had explored that part of the country, in which the Alligator creek tract of land is described to lie, nor any land answering the description of the 38,400 acre tract, sold by the said Fernando M. Arredondo, sen., to your orator; and your orator expressly charges, that upon the occasion of the receipt of this information from the said Reuben Charles, the said Joseph M. Arredondo informed your orator that his reasons for not agreeing to take in exchange the whole of the Alligator creek tract of land, for an equal quantity of the Alachua lands, was, that his father, the said Fernando M. Arredondo, sen., had an interest in one half only of the said Alligator creek land, and that the other half was owned by one Juan Blas de Entralgo, of Havana, aforesaid; that, though the grant therefor was in the name of his father, the said Entralgo had always been equally concerned in it, and that the said Juan Blas de Entralgo, as was alleged by the said Joseph M. Arredondo, ought to secure your orator to the extent of a moiety of the purchase of the said land, as he participated equally in the avails of the sale thereof. And your orator avers, that he never, before the period at which he received the said information from the said Joseph M. Arredondo, as aforesaid, had any knowledge or suspicion that the said Entralgo was in any way whatever concerned with the said Fernando M. Arredondo, sen., or otherwise, in the said pretended Alligator creek lands.

Your orator further shows unto your honor, that, so early as the beginning of January, one thousand eight hundred and twenty-two, difficulties and doubts had arisen as to the regularity and validity of the grant for the said pretended Alligator creek lands, which gave your orator considerable uneasiness; and for the purpose of securing your orator against these difficulties, the aforesaid Fernando M. Arredondo, junior, who alleged himself to be the agent of his father, the said Fernando M. Arredondo, senior, and the said Joseph M. Arredondo, who composed as co-partners a mercantile house and firm in Havana, aforesaid, under the name and style of Arredondo & Son, or Fernando M. Arredondo & Son, and that he was duly authorized to that end, en-

tered into an agreement with your orator, whereby he was to receive, by way of exchange for one half of the said Alligator creek land, which was to be conveyed to the said Arredondo and Son by your orator, for one sixteenth part of a certain tract of land in Alachua, granted to the said mercantile firm of Arredondo & Son, containing ——— acres, or thereabouts; which said sixteenth part of the said tract of land was conveyed by the said Fernando M. Arredondo, junior, as the agent, and in behalf of the said Arredondo & Son, to your orator; and various other agreements and stipulations, for the purpose of securing your orator against a failure in the title to the said Alligator creek tract of land, were entered into by the said Fernando M. Arredondo, junior, as the agent of the said Arredondo & Son, as will appear, reference being had to the deed of indenture, bearing date the 22nd January, 1822, made on the said occasion between the said Fernando M. Arredondo, junior, as agent, as aforesaid, and your orator; and your orator prays leave to refer to the same, on the hearing of this cause, if it shall be necessary for him so to do. But, and so your orator further shows unto your honor, it turned out that the said Fernando M. Arredondo, junior, was not the agent of the said Arredondo & Son, to the extent to which he alleged he was, and had not authority to enter into the said arrangement with your orator, at least, so the said Fernando M. Arredondo, senior, insisted; and he expressly refused to be bound by, or assent to the said indenture of the 22nd January, 1822, in consequence of which, the said indenture, and all things therein, were admitted and declared to be wholly void and inoperative by the aforementioned indenture made by, and between the said Joseph M. Arredondo, for himself, and the said Fernando M Arredondo, senior, of the one part, and your orator of the other part, and bearing date the aforesaid 13th of July, 1824.

Your orator further shows unto your honor, that he had paid to the said Fernando M. Arredondo, senior, on account of his aforesaid promissory note of $10,875, by the time the first instalment thereof became due, considerably more than that instalment; and that, of the last instalment of the said note, your orator paid to, and for the said Fernando M. Arredondo, senior, very near the full amount thereof, by the time it became due; and that since the said last instalment fell due, your orator has made payments to, and for the use and benefit of the said Fernando M. Arredondo, senior; and before your orator had any notice of the indorsement of the said note herein after mentioned, greatly exceeding what was owing to him by your orator upon the said promissory note; and for which payments, so far as they exceed what were so due upon the said note, the said Fernando M. Arredondo, senior, is justly indebted to your orator.

Your orator further shows unto your honor, that the concession or grant under which the aforesaid 38,400 acre tract of land, represented, as aforesaid, to be situated on the aforesaid pretended creek, called Alligator creek, was made, or purported to have been made, to the said Fernando M. Arredondo, senior, and not to the said Fernando M. Arredondo, junior, as the said Arredondo, senior, alleged to your orator, as herein before stated; and your orator believes, and ex-

pressly avers and charges, that the aforenamed Juan Blas de Entralgo, and the said Fernando M. Arredondo, senior, were jointly and equally concerned in procuring the said concession or grant, for the said pretended Alligator creek tract of land; and in the procuring the aforementioned false and fraudulent plat of the said land, the copy of which was so used as afosesaid by the said Fernando M. Arredondo, senior, as a means of inducing your orator to purchase the said pretended land, as is herein before alleged, that the said Juan Blas de Entralgo was jointly and equally concerned, interested, and entitled, by the understanding and agreement between them on this subject, with the said Fernando M. Arredondo, senior, in, and to, all the benefits, rights, advantages, and moneys which were expected to arise, and which did arise, from the said grant and the aforesaid sale of the said land to your orator; that the said Entralgo well knew at the time, or soon after the said purchase was made by your orator, that the aforesaid note of 10,875 dollars was given by your orator to the said Fernando M. Arredondo, senior, for part of the consideration money of the said purchase; and that the said Entralgo had participated with the said Fernando M. Arredondo, senior, in the payments made by your orator, as aforesaid, for the said pretended Alligator creek land, and received a moiety, or other large part of them, on account of his interest in the said pretended lands, as the said payments were made by your orator, or at other times. And your orator further charges, that the said Juan Blas de Entralgo, and the said Fernando M. Arredondo, senior, have combined and confederated together for the purpose of compelling your orator to pay the said last instalment of the said promissory note, or some other large sum appearing by the face of the said note to remain unpaid and due, notwithstanding the whole thereof has in truth long since been paid, and notwithstanding the said Fernando M. Arredondo, senior, and Juan Blas de Entralgo both knew that the said note has been wholly paid; and, in order the more easily to effect their said fraudulent purpose, the said Fernando M. Arredondo, senior, has made a pretended transfer of the said note to the said Entralgo, by indorsing the same to him; and the said Entralgo has, with the knowledge and consent of the said Fernando M. Arredondo, senior, and in pursuance of the said fraudulent combination, instituted a suit upon the said note on the common law side of this honorable court; which said suit is now pending in the said court against your orator. Your orator further charges and avers, that the said note so given, as aforesaid, by your orator to the said Fernando M. Arredondo, senior, and on which your orator has been sued, as aforesaid, was not indorsed to the said Juan Blas de Entralgo, until sometime after the last instalment was due, according to the tenor and effect thereof; and that it was not indorsed to him until after your orator had objected to the said Fernando M. Arredondo, senior, to making further payments on account of the said notes, because of the doubts and difficulties in regard to the Alligator creek land; and that after the said last instalment of the said note was due, as aforesaid, and, as your orator verily believes, in consequence of the said objections of your orator, and for the fraudulent purpose of facili-

tating the fraudulent and wrongful enforcement of the payment of what appeared by the face of the said note to be due thereon, though the said Entralgo well knew that nothing was in truth due thereon. The said note was indorsed by the said Fernando M. Arredondo, senior, to the said Entralgo, upon no consideration whatever passing from the said Entralgo to the said Arredondo, other than such as may have grown out of their previous private understanding and agreement concerning the said pretended Alligator creek lands. And your orator further charges, that either the interest of the said Fernando M. Arredondo, senior, in the said note remains, and is unchanged and undiminished by the said indorsement thereof to the said Entralgo, and continue as between the said Arredondo and the said Entralgo, just as they were before the said indorsement; or, if the said indorsement were really designed to pass the whole beneficial interest, or any part thereof in the said note, the same was passed and transferred to the said Entralgo for, or on account of, what remained owing to him by the said Fernando M. Arredondo, senior, from the avails of the sale of the said pretended Alligator creek tract of land to your orator, or for, or on account of, some arrangement or understanding between them growing out of their joint interest in the grant of the said land, and in the proceeds of the sale thereof to your orator. And your orator avers, that the said Entralgo was informed, and well knew, before the indorsement of the said note to him, that your orator had refused, and would object to make further payments on account of said note; and that before your orator knew of the connection of the said Entralgo with the said Fernando M. Arredondo, senior, in regard to the said pretended Alligator creek lands, and before the indorsement of the said note, he warned and advised the said Entralgo against receiving the said note.

Your orator further shows unto your honor, that the aforesaid connection and union of interest of the said Fernando M. Arredondo, senr., and the said Entralgo, in the said grant of the said pretended Alligator creek lands, and in the procuring thereof, and in the benefits, rights, advantages, and moneys arising therefrom, and from the aforesaid sale of the said lands to your orator, and the knowledge of the said Fernando M. Arredondo, senr., that the aforesaid pretended original plat and survey of the said land were false, and never had been made under the authority of the Spanish Government; and that the said Fernando M. Arredondo, senr., pretended, alledged, asserted, and affirmed, as is herein-before stated, that the said survey of the said land had been regularly made, and that the copy of the said pretended original plat which was exhibited to your orator as is hereinbefore stated, was a true copy of a genuine official and authenticated plat of the said Alligator Creek land; and that the said Fernando M. Arredondo, senr., knew, as is herein before stated, that the said land sold by him to your orator as being situated on Alligator creek, had no existence; that the said Fernando M. Arredondo, senr., knew, as is hereinbefore stated, that your orator relied upon, and was induced by his aforesaid representations in making the purchase of the said land; that the said Juan Blas de Entralgo has received a

part of the moneys paid by your orator to the said Fernando M. Arredondo, senr., for the said pretended Alligator creek lands; that the said Entralgo holds the said note of your orator as trustee, either for the whole, or a part thereof, for the said Fernando M. Arredondo, senr.; or that if the whole thereof have really been assigned to the said Entralgo for his own use, the consideration on which it has been so assigned, grew out of, and is founded upon, the joint interest of the said Arredondo and Entralgo in the said pretended Alligator creek lands, or upon some agreement or understanding between them in regard to the said land; that the said note was not indorsed to the said Entralgo until after the said last instalment was due; that the said Entralgo knew before the said indorsement thereof, and before the last instalment fell due, that your orator had objected to making any further payments on account of said note; that the said Entralgo knew before, and at the time the said note was indorsed to him, that your orator had made payments to a large amount to the said Fernando M. Arredondo, senior, on account of said note, which were not indorsed thereon, and that in truth nothing was due on the said note; that the said note was indorsed for the purpose of facilitating the enforcement of the payment of what appeared on the face of the said note to be due; and that the interests of the said Fernando M. Arredondo, senior, and the said Entralgo, remain unchanged by the said indorsement of the said note to the said Entralgo, and that they still possess a joint interest in the same, as has been hereinbefore alleged, are all matters, which, so far as your orator knows, and as he believes, rest peculiarly and exclusively in the knowledge of the said Fernando M. Arredondo, senior, and the said Juan Blas de Entralgo. And your orator avers, that he has no means of defending himself at law against the suit so instituted, and now depending against him as aforesaid, without the answers of the said Fernando M. Arredondo, senr., and the said Juan Blas de Entralgo, to this your orator's bill of complaint, for the proof of the aforegoing facts is necessary to his defence against the said suit, and without it he cannot proceed to the trial of the said cause.

Your orator further avers and shows unto your honor, that he is willing and ready, and hereby offers to reconvey or release unto the said Fernando M. Arredondo, senior, the moiety of the aforesaid pretended Alligator creek land, and all his title and estate therein, when and in such manner as your honor shall consider to be just and proper, if to your honor it shall seem fit and equitable that he should do so.

And your orator had well hoped that, the said Fernando M. Arredondo, senior, and the said Juan Blas de Entralgo, would have come to a full, fair, and equitable adjustment of his demands upon them, and have reimbursed to him the moneys paid by him as aforesaid, on account of, or for the said Alligator creek land, allowing and retaining from the said payments the sum of twelve thousand five hundred dollars, as the price of one moiety of the said Alligator creek lands; which your orator has by his friends frequently in an amicable way, requested them to do. But now so it is, may it please

your honor, they have wholly refused to listen to this reasonable request of your orator, and on the contrary thereof, the said Fernando M. Arredondo, sen., and the said Juan Blas de Entralgo combining and confederating together, with divers other persons at present unknown to your orator, whose names when discovered, he prays may be herein inserted with apt and proper words to charge them as defendants hereto, contriving how to injure and oppress your orator, in the premises, pretend at one time that the Alligator creek land is in existence, and to be found just as it was represented by the said Fernando M. Arredondo senr., to your orator; and that though the said Juan Blas de Entralgo was originally, and is now concerned and interested in the said land and the avails of the sale thereof to your orator, that your orator is not prejudiced thereby; and at other times they deny that the said Entralgo was so originally concerned in the said land, and that the said Arredondo has now any interest in the aforesaid suit so instituted and now depending against your orator as aforesaid, and that the said Entralgo is trustee for the said Arredondo in the said suit. Again, they pretend that they had no concern in procuring the aforesaid false and fraudulent plat of said land, and are now, and always were, ignorant that it was false and fraudulent. At times, the said Entralgo admits, that the said note was not indorsed to him, till after the last instalment thereof was due, but insists that your orator had no equities against the said note at the time it was indorsed to him; at other times, he pretends that it was indorsed to him before the said last instalment thereof became due, and that he is well entitled to all that appears to be due by the face of the said note; all which actings, doings, and pretences, are contrary to truth, equity and good conscience, and tend to the manifold wrong and injury of your orator in the premises.

In tender consideration whereof, and for as much as your orator is remediless by the ordinary rules of the common law, and can only obtain effectual relief in the premises, by the intervention of a court of equity, where matters of this sort are peculiarly cognizable:

To the end therefore, that the said Fernando M. Arredondo, senior, and Juan Blas de Entralgo, and the rest of the confederates, when discovered, may upon their several and respective corporal oaths, true, full, direct, and perfect answer make to all, and singular, the matters hereinbefore charged and stated, as fully and particularly as if the same were hereinafter repeated, and they thereto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their respective and several information, heresay and belief; and more especially that they may answer and set forth, whether the said Juan Blas de Entralgo and Ferdinand M. Arredondo, senior, were not jointly concerned and interested in procurring the grant or concession for the said pretended Alligator creek land, and in all the benefits and advantages which were expected to arise from it, and in the proceeds of the aforesaid sale thereof to your orator; whether the said Entralgo has not participated with the said Fernando M. Arredondo, senior in the payments made by your orator to the said Arredondo, sen-

ior, for the said Alligator creek land; whether the said Entralgo had not an interest in the aforesaid note before its indorsement to him by the said Arredondo, senior; whether, if he had not such an interest, he is not a trustee for the said Arredondo in the said said suit so founded on the said note, and now depending against your orator as aforesaid, either to the whole or a part of what may be recovered thereby; whether the said Arredondo, senior, and the said Entralgo did not know at the time the said land was sold to your orator, that the said Alligator creek land had no existence; whether the aforesaid representations, assertions and affirmations in regard to the said Alligator creek land, and the survey and plat thereof, were not made by the said Fernando M. Arredondo, senior, as hereinbefore alledged; whether the said Fernando M. Arredondo, senior, did not know or believe that they were untrue at the time he made them; whether the said Fernando M. Arredondo, senior, and the said Entralgo did not know at the time that the said Arredondo made the said sale and the said representations, that the said Alligator creek land had not been surveyed by any person authorized by the Spanish Government to survey it, and that the said pretended original plat, was not exhibited to your orator as aforesaid; and whether the representations hereinbefore stated to have been made by the said Arredondo, senior, were not made by him to your orator concerning the said plat and the copy so exhibited to your orator; whether the said Fernando M. Arredondo, senr., did not know that your orator relied upon his said representations and was induced by them to make the said purchase of the pretended Alligator creek land, as has hereinbefore been stated. And that the said Ferdinand M. Arredondo, senior, and the said Juan Blas de Entralgo, may, in manner aforesaid, answer and declare whether the aforementioned promissory note or memorandum was not indorsed *was not indorsed* to the said Entralgo after the last instalment thereof had become due, and the said particular time at which it was so indorsed; whether the said Arredondo, senior, has not an interest in the note and in the money which may be recovered by the said suite against your orator; whether the said note was not so indorsed to the said Entralgo, after your orator had made objections to the said Arredondo, senior, to making further payments on account of said note; whether the said Entralgo did not know before, or at the time he received said note from the said Arredondo, senior, that your orator had made objections to making further payments on account of said note; whether the said Entralgo was not informed of these objections by letter from your orator, or by a message from him through a third person, or by the said Arredondo, senior, himself, before the said note was indorsed to him; whether any consideration passed from the said Entralgo for the indorsement of the said note, to the said Arredondo, senior, and if any such consideration existed, of what it consisted, when it arose, and how and when it passed to the said Arredondo, senior; whether if there were any consideration for the indorsement of said note, it did not concern or grow out of the original agreement or understanding, or some agreement or understanding, in relation to the joint interests of the said Arredondo, senior, and the

said Entralgo, in the said pretended Alligator creek land; whether the rights of the said Arredondo, senior, and the said Entralgo do not remain in the said note, precisely as they were before the said indorsement thereof was made; and whether the said indorsement was not resorted to for the purpose of facilitating the enforcement of the payment by your orator of what appeared to be due upon the face of said note: that the said Entralgo may declare whether he did not know before the indorsement of said note to him, or at any other and what other time, that your orator had made large payments to and for the said Arredondo, senior, on account of said note, which were not indorsed on said note; that the said Fernando M. Arredondo, senior, may particularly set forth and declare, whether the said note was not indorsed to the said Entralgo after your orator objected to him to make further payments on it, because of the difficulties and doubts concerning the Alligator creek land; whether he the said Arredondo, senior, did not sometime after the last instalment of said note was due, wish your orator to accept a bill of exchange from him in favor of one Jose Coppinger, and offer to draw in favor of him for $1,000 or some other sum on account of said note; whether he, the said Fernando M. Arredondo, senior, did not after the said last instalment of said note was due, express a desire to your orator, by letter or otherwise, that your orator would discount from the said note a certain sum of money received by the said Arredondo, senior, from Messrs. Juara, Gay & Co., of Havanna, which belonged to your orator; whether the said Arredondo, senior, had in the years 1823 and 1824, any demands of any kind against your orator, except those founded on the said note of your orator to him given on the purchase of the aforesaid lands; and if he had, that he may declare particularly what these demands were, and upon what they were founded; whether the said Fernando M. Arredondo did not refuse to be bound by the deed made and entered into between his son Fernando M. Arredondo, junior, as is hereinbefore stated; whether he did not authorize and empower his son Joseph M. Arredondo, to settle, adjust, and arrange, in the manner he did by the deed of the 13th of July, 1824, or in any way the said Joseph M. Arredondo might think proper, the affairs of your orator, and him the said Fernando M. Arredondo, senr. relating to the Alligator creek lands and the Alachua lands; whether the said Alachua lands and the grant under which they were claimed, were not made and did not belong to the mercantile firm of Arredondo & Son; whether the said firm was not composed of the said Fernando M. Arredondo, senior, and the said Joseph M. Arredondo; and that the said Arredondo, senior, and the said Entralgo, may declare whether the said Joseph M. Arredondo did not write to them, or one of them, that he had arranged with and satisfied your orator, for the one half of the Alligator creek land; and that it was necessary that the said Entralgo should do so as to the other half, as the said land was not to be found; and whether he did not so write, or to that effect in 1824, and at what time in 1824; and whether the said Joseph M. Arredondo did not inform them, or one of them, that he had to give time to effect an amicable adjustment of the matters so pending the proceedings in

the suit in the name of the said Entralgo against your orator upon the said note; and that the said Arredondo, senior, and the said Entralgo may declare, whether at the time of the purchase of the said land, your orator was not engaged in a very profitable mercantile business in the aforesaid city of Havana, and whether the purchase of the said lands so made as aforesaid, was not the only or principal cause of his abandoning his mercantile pursuits therein: and that the said Juan Blas Entralgo and Fernando M. Arredondo, senior, may answer the premises; that the said Entralgo, and the said Arredondo, senior, may, if it shall appear that the said Entralgo has participated in the payments made by your orator on account of, and for, the said pretended Alligator creek land, reimburse and pay to your orator the sum of twelve thousand five hundred dollars, the price of the moiety of the said Alligator creek lands, together with interest, and the just and equitable damages resulting to your orator from the non-existence of the said land; and if it shall appear that, in equity, the said Entralgo should not be called upon to contribute to, or make such reimbursements, or to pay such interest or damages, then that the said Arredondo, senior, may alone do so; and that, in the mean time, an injunction may be awarded by this honorable court to restrain the said Juan Blas de Entralgo from any further or other proceeding upon the said note of your orator, and in the said suit so depending thereon, on the common law side of the court; that the said note may be brought into this court, and by it be cancelled and declared null, and that your orator may have such further and other relief in the premises, as to your honor shall seem agreeable to equity and justice.

May it please your honor to grant unto your orator the territory's most gracious writ of subpœna, to be directed to the said Fernando M. Arredondo, senior, and the said Juan Blas de Entralgo, commanding them at a certain day, and under a certain pain therein to be inserted, personally to be and appear before your honor in this honorable court, then and there to answer the premises, and to stand to and abide such order and decree therein, as to your orator shall seem agreeable to equity and good conscience; and your orator will ever pray, &c.

FLOYD & DRYSDALE,
Solicitors for Complainant.

And, afterwards, to wit, on the twenty-second day of August, in the year of our Lord one thousand eight hundred and twenty-nine, the said defendants by their attorney, John Rodman, brought and filed in the clerk's office, aforesaid, their demurrer to the said amended bill of the complainant, which said demurrer is in the words and figures following, to wit:

"*To the honorable Joseph L. Smith, judge of the Superior Court for the eastern district of Florida, exercising chancery jurisdiction:*

The demurrer of Fernando M. Arredondo, senior, and Juan Blas de Entralgo, the defendants to the amended bill of complaint of

Moses E Levy, complainant against the said Fernando de la Maza Arredondo, senior, and the said Juan B. de Entralgo.

These defendants, by protestation, not confessing or acknowledging all or any part of the matters or things, in and by the said amended bill set forth and complained of, to be true, in manner and form, as the same are herein, and hereby set forth and alleged, saith, they are advised by their counsel, that there is no matter or thing in the said amended bill, contained, good and sufficient in law, to call these defendants, in question, in a court of equity for the same, but there are good causes of demurrer thereto, and therefore these defendants do demur thereto, and for causes of demurrer, say—

1st. That the complainant's said amended bill (in case the allegation therein contained were true, which these defendants do in nowise admit,) contains not any matter of equity whereon to ground any decree, or give the complainant any relief or assistance, as against them these defendants, because the said complainant in, and by his said amended bill, seeks to recover from these defendants an amount of money as damages for the non-performance of certain covenants and stipulations on the part of Fernando de la Maza Arredondo, senior, a co-defendant in said amended bill of complaint, and entered into and made between him the said complainant, and the said Fernando de la Maza Arredondo, on the sale of a certain tract of land of 38,400 acres, called, in said amended bill, the Alligator tract of land, and which was sold and conveyed by the said Arredondo to the agents and trustees of him, the said complainant, for his use and benefit, and in which tract of land, and the sale thereof, it is pretended in said amended bill, on the pretended declaration of one Joseph M. Arredondo, since deceased, that this defendant was interested and concerned.

2d. That the damages claimed in and by the said amended bill of complaint, for the non-performance of the covenants and stipulations made by the said Arredondo, and for the alleged fraud and misrepresentation in the sale of the said Alligator tract of land, constitute a question at common law, where the said complainant might have a complete remedy, and the damages are not cognizable in a court of equity.

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3d. That it appears in and by the said amended bill of complaint, that if any fraud, or misrepresentation, was, in fact, committed by the said Arredondo, in the sale of the said Alligator tract of land, the same was purged and released by the said complaint, in and by a certain deed of indenture bearing date the 13th of July, 1824, and particularly referred to in said amended bill of complaint, and filed among the documents in this cause, by which said deed of indenture, the said Fernando de la Maza Arredondo, together with his son Joseph M. Arredondo, conveyed to the said complainant, 19,200 acres of land, at Alachua, in lieu of, and in exchange for, one-half of the said Alligator tract of land.

4th. That the said complainant, in his amended bill, seeks for equity, without offering to do equity, was much as he seeks to recover damages for a pretended fradulent sale of lands, without offering to give

up and release his claim to all the lands conveyed to him, and which he holds under conveyances from the said Arredondo, and all of which are closely connected with the alleged fraud in the sale of the Alligator tract of land.

5th. That it appears in and by the complainant's amended bill, that the promissory note for 10,875 dollars, transferred by indorsement from the said Arredondo to this defendant, was given exclusively as the price, and in consideration of the purchase of a certain tract of land of 14,500 acres on the St. Johns' river, in the sale of which tract of land it is not pretended that there was any fraud or misrepresentation.

6th. That it appears in and by the said amended bill of complaint, that the purchase money, and consideration for the two tracts of land together, namely, the one on St. Johns' river of 14,500 acres, of land, and the Alligator tract of 38,400 acres, were the sum of thirty-five thousand eight hundred and twenty-five dollars, whereas the deed of conveyance for both of the said tracts of land, from the said Fernando de la Maza Arredondo, senior, to Hernandez and Chevitean, in trust for the said complainant, which deed of conveyance is made an exhibit in this cause; and a certified copy thereof, filed among the documents in the same, expressly declares that the whole of the consideration and purchase money of the said two tracts of land were only twenty-five thousand dollars.

7th. That in and by the said amended bill of complaint, the said complainant seeks to discover from this defendant, Juan de Entralgo, his title, as indorsee, to the said promissory note, for 10,875 dollars, to aid him, the said complainant, in his defence to a suit on the common law side of this court, brought by this defendant, Entralgo, as indorsee of said promissory note, against the said complainant, and now pending in this court; and this defendant, Entralgo, is advised by his counsel, that he is bound by the law of the land to discover his title in and to said promissory note as the indorsee thereof. Therefore, and for divers other errors and imperfections in the said amended bill appearing, these defendants do demur in law thereto, and humbly demand the indulgence of this honorable court, whether they shall be compelled to put in any further or other answer to the said amended bill; and humbly pray to be hence dismissed with their reasonable costs, in this behalf most wrongfully sustained.

JOHN RODMAN,
Solicitor and Counsel for the Defendants.

And, afterwards, before the superior court for the eastern district of Florida, sitting as a Court of Chancery, holden at the court house in the city of St. Augustine, at the term of October, in the year of our Lord one thousand eight hundred and twenty-nine, to which term this cause had come by regular continuance, to wit, on Wednesday the third day of said term, and the seventh of said month, the following entry was made of record in this cause, to wit:

MOSES E. LEVY, *Complainant*,
vs.
FERNANDO M. ARREDONDO, senior,
AND JUAN DE ENTRALGO, *Defendants.*

The demurrer of the defendants to the amended bill of complainant being overrulled by the court, on motion of the complainant, by his solicitors, it is ordered, that the said defendant do appear and answer the said complainant's amended bill of complaint in *twenty days* from the date hereof, otherwise the said bill will be taken *pro confesso* against them.

And, afrerwards, at the same term of October, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Wednesday the fourth day of said term, and the twenty-eighth of said month, the following entry of record was made in said cause, to wit:

MOSES. E. LEVY, *Complainant*,
Against
FERNANDO M. ARREDONDO, senior,
AND JUAN DE ENTRALGO, *Defendants.*

On motion of the complainant's solicitors, it was aleged that, by an order of this court of the seventh of the present month of October, it was ordered that the defendants should appear and answer the complainant's bill of complaint, in *twenty days* from the date of of the said order, otherwise the said bill would be taken *pro confesso* against them; and it appearing to the court that the said defendants have not, nor have either of them put in their or his answer to the said bill, it was, therefore, prayed that the said bill might be taken *pro confesso* against the said defendants, which is ordered accordingly.

And, afterwards, before the Superior Court for the Eastern District of Florida, sitting as a court of chancery, holden at the court house in the city of St. Augustine, at the term of March, in the year of our Lord one thousand eight hundred and thirty, to which term this cause had come by regular continuance, to wit, on Wednesday the third day of said term, and the third day of said month, the following entry of record was made in this cause, to wit:

MOSES E. LEVY, *Complainant*,
vs.
FERNANDO M. ARREDONDO, senior,
AND JUAN DE ENTRALGO, *Defendants.*

This day came the parties by their solicitors, and the said complainant, by his solicitor, objected to the filing of the answer of the defendant, Arredondo, offered to be filed herein, on the ground that the same was not a full answer to the said complainant's bill of complaint; which objection was duly argued, but the court not being sufficiently advised of and concerning the premises, took time to consider. And, afterwards, at the same term of March, in the year of our Lord one thousand eight hundred and thirty, to wit, on Mon-

day the fifth day of said term, and the eighth of said month, the following entry of record was made in this cause, to wit:

MOSES E. LEVY, *Complainant*,
vs.
FERNANDO M. ARREDONDO, senior,
AND JUAN DE ENTRALGO, *Defendants*.

This day came the parties by their solicitors, and the objections heretofore made, and submitted to this court, by the complainant in this cause, to the filing of the answer of the defendant, Arredondo, having been withdrawn by the said complainant, it is therefore ordered and decreed by this court, that the said answer be received and filed as of the twentieth day of February last; and that the said order and decree of this court heretofore entered in this cause, on the twenty-eight day of October, 1829, that the complainant's bill in this cause be taken for confessed, be rescinded and vacated as to the said Arredondo. And it is further ordered that this cause be set for a hearing on the second Monday of July next.

The answer of the defendant, Fernando M. Arredondo, senior, was, agreeably to the foregoing order, filed as of the twentieth day of February, in the year of our Lord one thousand eight hundred and thirty, being the day on which the same was offered to be filed, which said answer is in the words and figures following, to wit:

To the honorable Joseph L. Smith, judge of the Superior Court for the Eastern District of Florida, exercising chancery jurisdiction.

The separate answer of Fernando de la Maza Arredondo to the bill of complaint of Moses E. Levy, against him, by the name of Fernando de la Maza Arredondo, senior, and against Juan de Entralgo, by the name of Juan Blas de Entralgo, defendants.

This defendant saving, and reserving to himself now and all times hereafter, all and all manner of benefits and advantages of exception that can, or may be had or taken to the many errors, uncertainties, and insufficiencies in the said bill of complaint contained, for answer thereto, or unto so much thereof as this defendant is advised it is in anywise material or necessary for him to make answer unto, answering, says, that he admits that, on the third day of August, in the year one thousand eight hundred and twenty, at Havana, in Cuba, he sold and conveyed to Messieurs Hernandez and Cheavitean, merchants of that place, the two tracts of land in Florida, mentioned in said bill of complaint; and this defendant understood at the time of the sale thereof, that the said tracts of land were purchased for the benefit of the complainant in said bill of complaint, but the deed of conveyance was made to the said Hernandez and Cheavitean absolutely, without any mention therein of any interest of the said complainant in said tracts of land; that the real consideration for the purchase of the said two tracts of land was thirty-five thousand eight hundred and seventy-five dollars, of which twenty-five thousand dollars were for the price of the tract on Alligator creek, and ten thousand eight hundred

and seventy-five dollars were for the tract on the St. Johns river, although it is mentioned in the deed of conveyance for both the said tracts of land, that the consideration was twenty-five thousand dollars, of which twenty thousand dollars were for the tract on Alligator creek, and five thousand for the tract on the St. Johns river; but this defendant does not now recollect how this discrepancy between the real amount of the consideration for the said two tracts of land, and the amount thereof expressed in the deed of conveyance happened.

And this defendant further answering, says, that of the aforesaid consideration of thirty-five thousand eight hundred and seventy-five dollars for the said two tracts of land, the sum of ten thousand dollars was paid in two bills of the said complainant of five thousand dollars each, on the said Hernandez and Cheavitean, and the sum of fifteen thousand dollars in copper kettles, bought by this defendant of the said complainant; and for the balance of ten thousand eight hundred and seventy-five dollars, this defendant received from the said complainant his promissory note, dated at Havana, the 3rd of August, 1820, payable in one and two years, from the date at which the United States should take possession of the Province of East Florida, which said note was drawn payable to this defendant or to his order. And this defendant admits that, of the sum of twenty-five thousand dollars, paid in bills, and copper kettles as aforesaid, twenty thousand dollars were on account of the Alligator creek tract of land, and five thousand dollars on account of the St. Johns tract of land.

And this defendant admits that, at the time of the sale of the said tracts of land, he did allege that the grant from the Spanish Government for the tract of 38,400 acres on Alligator creek, was in the name of his son, Fernando de la Maza Arredondo, junior, and did stipulate to produce a power of attorney from him, within two months, authorizing the sale of the same as aforesaid; but this defendant soon afterwards learned and ascertained, that he was mistaken on that point, for in truth, and in fact the said grant for the 38,400 acres on Alligator creek was made to this defendant, and bears date the 24th of March, 1817, and actually exists in the office of public archives in the city of St. Augustine. The said mistake arose from a practice in the public office under the Spanish Government, of neglecting to distingush between *senior* and *junior* in mentioning the names of this defendant and his son. And this defendant is ready and willing to make any further assurance in the conveyance of the said tract of land on Alligator creek, that this honorable court may order and direct.

And this defendant further answering, says, that he denies that, at the time of the sale of the two said tracts of land to Hernandez and Chevitean as aforesaid, this defendant did know that the said Hernandez and Cheavitean had no personal interest in the said lands, or in the terms of their purchase, or that they were trustees of the said complainant. This defendant, as he has above observed, says, that he understood, that the said two tracts of land were purchased by Hernandez and Cheavitean for the benefit of the said complainant, but what private understanding may have existed between them and

the said complainant in regard to the said lands, this defendant, at the time of the sale, knew nothing, nor does he now know any thing except from the allegations of the said complainant in relation to his interest in the purchase of the said two tracts of land.

And this defendant denies that at the time of the sale of the said two tracts of land as aforesaid, he knew that neither the said complainant, nor the said Hernandez and Chevitean, had ever been in Florida, or that they were perfect strangers to the face of the country, and the general character and quality of the lands, or that the said complainant depended upon the representations and descriptions of this defendant, in relation to the locality, value, and quality, of the said Alligator creek tract of land. And this defendant avers that the allegation in the said complainant's bill of complaint, that this defendant during all the time in which the said complainant, and the said Hernandez and Cheavetean, were trading and negotiating with this defendant for the purchase of the said two tracts of land, and up to, and at the time at which the aforesaid conveyance, whereby they were conveyed as aforesaid, was executed, represented, asserted, and affirmed, to the said complainant, and to his said agents, that the said tract of land, represented as containing 38,400 acres, was, as to upwards of one-half thereof, land of the very first quality, is absolutely false.

This defendant positively denies having at any time before, or at the time of the sale of the said two tracts of land, or afterwards, made any representations, assertions, or affirmations, either to the said complainant, or to his said agents, in regard to the quality of the said tract of land on Alligator creek, or of any part of it. This defendant merely exhibited to the said complainant and his agents, a certified copy of the grant of said land, together with a plat thereof, in neither of which is there a word about the kind or quality of the land mentioned in said grant and plat, nor of its location, otherwise than that it was situated on both sides of Alligator creek. The said tract of land on Alligator creek, as well as the tract on the St. Johns river, was purchased by the said complainant, and his said agents, with their eyes open, according to the grant, and the plat exhibited to them; and this defendant avers that the said plat is in all material points correct; that the same was made by Andrew Burgerin, a well known and skilful surveyor of East Florida, partly from his own observation, and partly from a survey which had been made a short time previously by, or under the direction of, the American General Harris, when he was killed by an Indian, and said survey was brought by said Indian to St. Augustine, and delivered to the Governor, or some other high officer, under the Spanish Government of East Florida. This defendant himself, knew nothing of the quality or local situation of the said tract of land, not having ever been in that part of Florida.

This defendant denies having represented to the said complainant, or his said agents, the creek, called Alligator creek, as rising or beginning at an Indian town or settlement, called Alligator town, and as running in a westwardly direction, and emptying into the Suawanee river, or any thing whatever about the situation of the said Indian

settlement, called Alligator town, or its distance from a place in Alachua, called Pens or Paynes town, or from Buena Vista, or that the said tract of land began at about seven miles from the said Alligator town.

This defendant admits that, at the time of the sale of the said land, he did represent that the tract of 38,400 acres on Alligator creek, corresponded with a certain plat thereof which was exhibited at the time of the sale, and that said plat was a true copy of the plat and survey of said land, filed in the public office of archives in the city of St. Augustine, and upon which the grant of said land was made; but this defendant denies that he ever asserted that said land had been regularly surveyed and located, under the authority of the Spanish Government, or that the said plat was a true copy of the *original official plat* of the said land. This defendant admits that the said plat, exhibited by him at the time of the said sale, was annexed to the deed of conveyance of the said bond.

This defendant further answering, says that the allegation in the complainant's said bill of complaint, that the said tract of land on Alligator creek, and the said creek itself, are altogether imaginary, is notoriously false; for it is a well known fact, that the said creek, called Alligator creek, exists in East Florida, and that there is an ample sufficiency of land on each side of said creek, whereon to locate and lay out the said 38,400 acres; that said creek discharges its waters into the river Santa Fé, which empties into the Suawane river, and thus, the said Alligator creek communicates and unites with the Suawane river; that the said Alligator creek is thus plainly laid down on Vignolé's map of Florida, with the name of Mr. Levy, (the said complainant,) marked by the side of said creek, as the proprietor of the land.

This defendant again denies, (since the charge is repeated in the complainant's bill of complaint,) that at the time of, or before, or after, the sale of the said Alligator creek tract of land, he made any representations or affirmations as to the quality and locality of said tract of land, otherwise than the exhibition of the copy of the grant and plat of the same. And this defendant again avers that there is such a creek as Alligator creek, and that the whole tract of 38,400 acres of land is to be found on said creek.

This defendant does not know that the said complainant, at the time that he made the purchase of the said tracts of land, was engaged in a very profitable business as a merchant in Havana, or what his inducements were to abandon his mercantile pursuits, but this defendant presumes that the said complainant thought he could make more money by speculating in land in Florida, than by pursuing his ordinary traffic in Havana, and the said complainant could not have been damnified as he alleges, by the *non-existence* of the said tract of land on Alligator creek, since both the land and the creek are notoriously in existence, and may be found by any person of ordinary intelligence, diligence, and good faith.

This defendant recognizes the arrangement stated in the complainant's said bill, to have been made between him and the late Joseph

M. Arredondo, as the agent and attorney in fact of this defendant, for an exchange of one half of the said Alligator tract of land for an equal quantity of land in Alachua, executed on the 13th July, 1824. This arrangement was made as a matter of accommodation, to relieve the said complainant from his pretended apprehensions in regard to the existence of the said Alligator tract of land, and not because the said complainant had any right in law or equity to claim any indemnity on account of the sale of the said Alligator tract of land. This defendant does not doubt the assertion of the said complainant in his bill, that he was anxious and desirous of exchanging the whole of the said Alligator creek tract of land, for an equal quantity of land in Alachua, and that he urged such an exchange to the said Joseph M. Arredondo, and that the latter very properly rejected the absurd proposal.

This defendant knows nothing of the employment of one Reuben Charles, (as stated in said complainant's bill,) to endeavor to discover the said Alligator creek tract of land, except what this defendant has lately, since his arrival in the city of St. Augustine; and if the said Reuben Charles has asserted that he could neither find such a creek as Alligator creek, nor any land answering the description of the 38,400 acre tract, sold as aforesaid, he, the said Reuben Charles, must have been extremely negligent or ignorant of the business he undertook to perform, or have acted fraudulently therein.

This defendant further answering, says, that if the said Joseph M. Arredondo ever asserted, or informed the said complainant, that this defendant had an interest in only one half of the said Alligator creek tract of land, and that the other half was owned by Juan Blas de Entralgo, of Havana, such assertion must have been gratuitously made by the said Joseph M. Arredondo, and without any authority from this defendant; for this defendant avers that, at the time of the sale of the said Alligator creek tract of land, this defendant was the sole owner thereof, and the said Juan Blas de Entralgo had no interest therein, otherwise than the said Entralgo was to receive from this defendant a certain sum of money for his services in aiding to obtain said grant, if the same should be confirmed.

This defendant further answering, says, that the conveyance and stipulations stated in the said complainant's bill to have been made in the month of January, 1822, by Fernando M. Arredondo, junior, as the agent of this defendant, and his late son, Joseph M. Arredondo, for one sixteenth part of the Alachua grant of land, in exchange for one half of the said Alligator creek tract, were made without any authority from this defendant, or the said Joseph M. Arredondo, and consequently, the indenture, and all things therein contained, executed by the said Fernando M. Arredondo, junior, as aforesaid, on the 22d of January, 1822, were disavowed by this defendant.

And this defendant further answering, says, that on the said promissory note for $10,875, given by the said complainant to this defendant, for the balance of the purchase money of the said two tracts of land, the following payments have been made by the said complainant, to wit, on the 6th of November, 1821, the sum of $1,818 75;

on the 16th of November, 1821, the sum of $800; on the 25th of November, 1821, $900; and on the 25th of April, 1822, the sum of $1,900 50, in an obligation of Don E. Martin; making in the whole, the sum of $5,419 25; and leaving a balance due on the said note at the time of the transfer, by indorsement of the same, to the said Juan de Entralgo; and this defendant avers that no part of the said balance has since been paid to this defendant or to any person authorized to receive the same by him: and this defendant expressly denies that any other sum or sums of money than as aforesaid, have been paid to this defendant, or for his use, on account of said note.

This defendant admits that the said Juan de Entralgo, called Juan Blas de Entralgo, in said bill of complaint, was concerned in procuring the said concession or grant for the said Alligator creek tract of land, but denies that he had any interest or concern therein, otherwise than the compensation he was to receive as aforesaid, and as escribano under the Spanish Government, in his official capacity, making out grants of land under the authority of the said Spanish Government, or that he, the said Entralgo, had otherwise any thing to do with the procuring of the plat of said land. And this defendant also denies, that the said Juan de Entralgo was jointly and equally concerned, and interested, and entitled by an understanding or agreement between him and this defendant, in, and to all, or any of the benefit, rights, advantages, or moneys, which were expected to arise, or which did arise, from the said grant and the aforesaid sale of the land to the said complainant.

This defendant admits that the said Juan de Entralgo did participate with this defendant in the payment made by the said complainant on account of, or for, the said Alligator creek tract of land, and that he, the said Entralgo, received a part of the same on account of his services as aforesaid.

And this defendant denies all and any combination or confederacy in said bill of complaint charged, with the said Juan de Entralgo, or with any other person, for the purpose of compelling the said complainant to pay the last mentioned instalment of the said promissory note, or any part of it; and this defendant avers that the transfer of the said promissory note, by the indorsement thereon of this defendant, to the said Juan de Entralgo, was *bona fide* made for a valuable consideration, being for a debt due from this defendant to the said Entralgo, long before the sale of the said Alligator creek tract of land, and entirely unconnected with the sale of the said tract of land, or any interest therein; and said transfer of said promissory note by indorsement as aforesaid, was made by this defendant to the said Entralgo before the last instalment became due and payable, that is to say, before the 10th day of July, 1823.

And this defendant further answering, says, that he has had nothing to do with the institution of any suit on the said note, on the common law, or any other side, of honorable court; and expressly denies all and any combination with the said Entralgo, or any other person, in the institution of said suit; and if the said Entralgo has instituted any suit of the kind, he did so of his own accord, as he

undoubtedly had a right to do, as the lawful holder of said promissory note, for a valuable consideration.

This defendant denies expressly the allegation in said bill of complaint, that the said promissory note was not indorsed to the said Entralgo until sometime after the last instalment was due, according to the tenor and effect thereof, or that it was not so indorsed until the said complainant had objected to making further payments on account of the said note, because of the doubts and difficulties in regard to the Alligator creek land.

And this defendant further answering, says, that the said promissory note does not remain unchanged and undiminished by the said indorsement thereof to the said Entralgo nor does the said note remain as it was before the indorsement thereof; nor was the said note passed and transferred to the said Entralgo; for, and on account of, what remained owing to him from the avails of the sale of the said Alligator creek tract of land, or on account of any arrangement or understanding between this defendant and the said Entralgo, growing out of their joint interest in the said tract of land, or the proceeds thereof.

And this defendant expressly denies all and any combining or confederating, as alleged in said bill of complaint, with the said Juan de Entralgo, and with all and every or any other person or persons.

And this defendant further denies that the said Juan de Entralgo is a trustee for this defendant in the said suit on the said promissory note, either for the whole or any part of what may be recovered on said note.

And this defendant denies that, after the last instalment on said note became due, he either wished or proposed to the said complainant to accept a bill of exchange from this defendant in favor of one Jose Coppinger, or offer to draw in favor of him for $1,000, or any other amount; and this defendant has no recollection that, after the last instalment on this said note became due, he ever expressed any desire to the said complainant, by letter or otherwise, that he, the said complainant, would discount from the said note any sum of money, received by this defendant, from Messrs. Juan, Gay & Co. of Havana.

This defendant has no recollection of having any demands against the said complainant in the year 1823 or 1824, except the balance due on the said note before the transfer of the same to the said Entralgo.

This defendant admits, that his son, Joseph M. Arredondo, was empowered to settle, adjust, and arrange, in the manner he did, by the deed of the 13th of July, 1824, or in any way he should judge proper, relating to the said Alligator creek tract of land and the Alachua lands; and this defendant also admits, that the grant under which the Alachua lands were claimed, was made to the mercantile [firm] of F. M. Arredondo & Son, and that the said firm was composed of this defendant and his son Joseph M. Arredondo. This defendant also admits, that he was informed, by the said Joseph M. Arredondo, of the exchange which had been made between him and the said complainant, of one half of the Alligator creek tract of land, for an equal quantity of land in the Alachua grant; but this defendant denies that

the said Joseph M. Arredondo ever wrote to him, or informed him that it was necessary that the said Entralgo should satisfy the said complainant for the other half of the said Alligator creek tract of land, or that the said land was not to be found, or that time should be given to effect an amicable adjustment, or that the proceedings in the suit, on the said note, should be suspended—without that there is any other matter or thing in the complainant's bill of complaint, contained, material or effectual, for this defendant to make answer unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall award, and humbly prays to be hence dismissed with his reasonable costs and charges on this behalf wrongfully sustained.

JOHN RODMAN,
Solicitor for Defendant.

CITY OF ST. AUGUSTINE,
County of St. Johns, ss.

Fernando de la Maza Arredondo being duly sworn, doth depose and say, that the facts stated in the foregoing answer, as within the knowledge of this deponant, are true; and the facts therein stated as derived from information and belief, are, to the best of the knowledge and belief of this deponant, true.

FERNANDO DE LA MAZA ARREDONDO.

Sworn to this 20th day of February, 1830, before me,
GEORGE GIBBS, *Clerk.*

And, afterwards, to wit, on the fifteenth day of March, in the year of our Lord, one thousand eight hundred and thirty, the said complainant, by his solicitor, brought and filed in the clerk's office aforesaid, the following additional interrogations as a part of the amended bill of the said complainant; which said additional interrogatories, and the exhibit annexed to the same, are in the words and figures following, to wit:

MOSES E. LEVY,
vs.
ARREDONDO & ENTRALGO. } In Chancery.

Motion for leave to file the following additional interrogatories, to be answered by the defendant Arredondo, in the above cause, to be made a part of the amended bill of complaint as to Arredondo—

Whether the said defendant had not in his possession, in the city of Havana, sometime in the year 1822, a promissory note, or obligation, made by the plaintiff Levy, and payable to Fernando de la Maza Arredondo, junior, the son of the said defendant, for the sum of $1,500; whether the said defendant, Arredondo, did not procure the commercial friends of the plaintiff in Havana, namely, Messrs. Juara, Gay & Co., to pay to him, the said defendant, the amount of the

said note, deducting or allowing to them a discount on the same for advancing the money; whether it was not discovered, after the said note had been discounted by Messrs. Juara, Gay & Co., and the money paid to the said defendant, that the plaintiff Levy had paid the whole or nearly the whole of the said $1,500 to the said Fernando M. Arredondo, junior, in Florida; whether the said defendant did not, on discovering that the said note had been paid by the plaintiff to Fernando M. Arredondo, junior, agree to allow the plaintiff credit therefor on the obligation of the said plaintiff for part of the purchase money of Alligator creek tract of land; whether the said defendant is not accountable to the said Levy for the amount of said note, or a part thereof, and for what part of it; whether the said defendant did not procure the discount of the said note from Messrs. Juara, Gay & Co., before the same, or any part thereof, became due; and whether the annexed letter and the signature thereto is not in the hand-writing of one of the firm of Juara, Gay & Co. and whether the copy of the note annexed thereto, is not a copy of the said note discounted by the said Juara, Gay & Co.

DRYSDALE & DOUGLASS,
For Plaintiff.

Copy of the *letter* and *note* referred to in the last interrogatory above, and attached to said interrogatories.

M. L Levy, Esq.
St. Augustine.

Havana, 11*th of November*, 1823.

Dear Sir: We have received your favor 7th October last acknowledging receipt of our account current. The interest on the debt of Masson will be calculated on the whole, when settlement of the balance will be made, which we hope will be from the next crop that begins now to come in.

For your better government of the note of yours, we have discounted to M. de la Maza Arredondo, we enclose hereunto a copy of it, and of the indorsement, by which you will perceive that it agrees with our account, where you are debited of the half $750, due in March last, and noted of $750, the other half, due next March.

We continue to enjoy tranquillity. For your government of the market, we enclose a price current, and remain, truly,

Dear sir,
Your ob't servt's,
JUARA, GAY & Co.

[*Copy of the translation of the Note.*]

"I owe and will pay to the order of Don Fernando de la Mazo Arredondo, junior, in one and two years from date, in halves, the sum of one thousand five hundred dollars, that is to say, $750 in each year, value received to my entire satisfaction.

$1,500 (Signed) M. E. LEVY.

St. Augustine, 5*th of March*, 1822.

Let it be paid to the order of Messrs. Juara, Gay & Co., Havana, 2nd Sept. 1822, for my son of the same name.
(Signed) FERNANDO DE LA MAZA ARREDONDO.
Approved—a Copy—Translation.

And, afterwards, on the same day and year last aforesaid, to wit, on the fifteenth day of March, in the year of our Lord one thousand eight hundred and thirty, the said defendant Arredondo, by his solicitor, brought and filed in the clerk's office of the said court, his answers to the said interrogatories, which said answer is in the words and figures following, to wit:

Superior Court for the Eastern District of Florida.

FERNANDO M. ARREDONDO, impleaded with
JUAN DE ENTRNLGO,
ads.
MOSES E. LEVY.

The answer of said Fernando M. Arredondo, to the additional interrogatories to the amended bill of complaint of the said M. E. Levy.

This defendant answering saith, that he admits that in the city of Havana, some time in the year 1822, he had in his possession a certain promissory note of the said complainant, payable to Fernando M. Arredondo, junior, the son of this defendant, and which said promissory note was placed in this defendant's hands for collection on account of his said son, and this defendant believes that the copy of the said note in the exhibit of a letter from Juara, Gay & Co., dated the 11th November, 1823, and annexed to the interrogatories, by way of amendment to the complainant's said bill, is true and correct, and that the signature of Juara, Gay & Co. to the said letter, is the true signature of one of the partners in said firm. And this defendant also admits he did discount the said note with the said Juara, Gay and Co. and received from them the amount thereof, deducting the interest; but this defendant not having access to his books, cannot say at what particular time said money was received. The amount received by this defendant was placed to the credit of his son on the books of this defendant. But this defendant does not know, and never heard or understood that it was discovered, after the said note had been discounted by the said Juara, Gay and Co., or at any time before, that the said complainant, Moses E. Levy, had paid the whole, or any part of the said note to the said Fernando M. Arredondo, junior, in Florida, or any where else.

And this defendant further answering saith, that he never, at any time, agreed to allow, to the said complainant, credit for the said note, or any part of the amount of it, on the obligation of the said complainant for part of the purchase money for Alligator creek tract of land, or in any other way, because this defendant never discovered, was informed, understood, or believed, that the said complainant had paid the said note, or any part of it, before it was paid, as aforesaid, by the said Juara, Gay & Co.

This defendant does not consider himself accountable in justice, law, or equity, to the said complainant for the amount of said note, or for any part of it. This defendant admits that he did procure the discount of said note from Messrs. Juara, Gay & Co. before said note became due, as it is not usual for persons who hold notes payable by men of responsibility to discount them, *after they become due.*

J. RODMAN,
Solicitor for Defendant.

COUNTY OF ST. JOHNS, *ss.*

Fernando de la Maza Arredondo, being duly sworn, doth depose and say, that the foregoing answers to the additional interrogatories, by way of amendment to the bill of complaint of Moses E. Levy, against this defendant, impleaded with Juan de Entralgo, are true.

FERNANDO DE LA MAZA ARREDONDO.

Sworn to, this 12th day of March, 1830.

E. B. GOULD,
Justice of the Peace.

And, afterwards, to wit, on the thirtieth day of March, in the year of our Lord one thousand eight hundred and thirty, the said complainant, by his solicitor, brought and filed in the clerk's office, aforesaid, his replication; which said replication is in the words and figures following, to wit:

MOSES. LEVY, *Complainant,*
vs.
FERNANDO M. ARREDONDO,
AND JUAN DE ENTRALGO, *Defendants.*

In the Superior Court—
In Chancery.

The Replication of the complainant, Moses E. Levy, to the answer of the defendant, Fernando M. Arredondo.

This replicant, saving and securing to himself all, and all manner of advantage and exception, which may be had or taken to the manifold errors, uncertainties, and insufficiencies in the answer of the said defendant, Fernando M. Arredondo, for replication thereto, say, that they do and will aver, maintain, and prove, their said bill of complaint to be true, certain, and sufficient, in the law, to be answered unto by the said defendant, and that the said answer thereto is very uncertain, evasive, and insufficient in the law, to be replied unto by this replicant, without that, that any other matter or thing in the said answer contained, material, or effectual, in the law, to be replied nuto, confessed or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays, as in and by his said bill he has already prayed, &c.

JOHN DRYSDALE,
Complainant's Solicitor.

And, afterwards, before the Superior Court for the Eastern District of Florida, sitting as a court of chancery, holden at the courthouse in the city of St. Augustine, at the term of July, in the year of our Lord one thousand eight hundred and thirty, to which term this cause had come by regular continuance, to wit, on Monday, the first day of said term, and the twelfth of said month, the following entry of record was made in this cause, to wit:

Moses E. Levy, *Complainant*,
against
Fernando M. Arredondo,
And Juan de Entralgo, *Defendants*. } In Chancery.

This day came the parties by their solicitors, and this came on for hearing, on the bill, amended bill, and amendment to the amended bill, together with the answer, and amended answer, of the defendant, Arredondo, having been read to the court, the said complainant proceeded to offer and read his evidence, but, there not being sufficient time to finish the evidence the cause was adjourned over till to-morrow morning.

And, afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty, to wit, on Tuesday, the second day of said term, and the thirteenth of said month, the following entry of record was made in this cause, to wit:

Moses E. Levy, *Complainant*,
vs.
Fernando M. Arredondo,
And Juan de Entralgo, *Defendants*. } In Chancery.

This day came the parties, by their solicitors, and the further hearing of this cause was on this day continued, and evidence was offered and read on both sides, but there not being sufficient time to go through with the evidence, and hear the argument of counsel, this cause was adjourned over till to-morrow morning. Bernado Segin, and John Lee Williams, were sworn as witnesses on behalf of the complainant, examined, and their testimony taken.

And, afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty, to wit, on Wednesday, the third day of said term, and the fourteenth of said month, the following entry of record was made in this cause, to wit:

Moses E. Levy, *Complainant*,
vs.
Fernando M. Arredondo,
And Juan de Entralgo, *Defendants*. } In Chancery.

This day came the parties, by their solicitors, and the hearing of evidence on both sides was on this day closed, and argument of counsel heard, but there not being sufficient time to conclude the argument of counsel, this cause was adjourned over till to-morrow morning.

And, afterwards, at the same term of July, in the year of our Lord one thousand eight hundred and thirty, to wit, on Thursday, the fourth day of said term, and the fifteenth of said month, the following entry of record was made in this cause, to wit:

Moses E. Levy, *Complainant*,
vs.
Fernando M. Arredondo,
And Juan de Entralgo, *Defendants*.
} In Chancery.

This day came the parties by their solicitors, and the argument of counsel on both sides was on this day concluded, and this cause submitted; but the court not being sufficiently advised of and concerning the premises, took time to consider.

Evidence and testimony taken, exhibited, and read in this cause, on the part of the Complainant.

No. 1.

Exhibited in evidence by Complainant, objected to by the Defendant, but admitted by the court.

[Translation.]

Bill of Sale.—Be it known that I, Don Fernando de la Maza Arredondo, an inhabitant and merchant of this place, declare that I am owner and lawful proprietor of a tract of land comprehending fourteen thousand five hundred acres, situated in the province of East Florida; and that Don Fernando, my son of the same name, owns another tract comprehending thirty-eight thousand four hundred acres, situated in the same province; which two tracts of land I propose to sell to the firm of Hernandez and Chevitean, under the condition that, within the peremptory term of two months, I should produce the power of attorney that might be necessary to that effect, for that part which belongs to my son, aforesaid, together with the title of property thereof; since, as to what relates to the tract belonging to me, nothing more was wanting, after seeing the testimony authenticated by the Notary, Don Juan De Entralgo, on the ninth day of August, of one thousand eight hundred and nineteen, which I presented to them, together with the plat explaining the locality and the boundaries of the two tracts, to which the firm of Hernandez and Chevitean assenting, with my warranty and surety in the part which belongs to my son, Fernando, there remaining to be removed another, and in some measure, greater difficulty, which was to prove that no * *alcabala* was to be allowed for the reasons which they represented to his Lordship, the superintendant and sub-delegate of the two Floridas, in a memorial to him directed on the seventh day of July last past, who, having taken all the necessary informations to this effect, provided by his decree, issued on the twenty-fourth day of the same month of July,

* A duty paid on every transfer of property.—*Note* of the Translator.

ordering, that in conformity to the information received and approved, the expedient should return to the general administrator, in order that it might expedite the bill which was solicited, exonerating from the duties of *alcabala*, and imposing the only condition that the bill of sale being executed, a testimony thereof should be presented to the government, and deposited in the national office of Florida for the corresponding ends; in consequence of which, it was thus resolved on the day of yesterday, by the said administrator, as it appears more particularly in the expedient in nine leaves of paper which is annexed in continuation, in order that it may produce its effects according to justice; and, in consequence of which, I grant for myself, and in the name of the said Don Fernando de la Maza, my son, in behalf of whom, and by way of a greater precaution, *I* GIVE MY ASSENT and surety willingly and spontaneously, expressly renouncing to all laws concerning the case, which assent and surety will be cancelled when I will produce the power and title of property which I mentioned in the beginning; and in these terms I hereby sell, and forever transfer, to the firm of Hernandez and Chevitean, inhabitants and merchants of this place, the said two tracts of land—that which belongs to me comprehending fourteen thousand and five hundred acres, and that belonging to my son comprehending thirty-eight thousand and four hundred acres, situated both in the province of East Florida, under the boundaries and survey shown in the plat annexed to the proceedings, which I exhibit, in order to annex them in continuation, and which also prove my title of property; and concerning the thirty-eight thousand and four hundred acres belonging to my son, the title of property thereof will be produced within the term of two months, more or less, together with the power of attorney, which, with a complete note, will be annexed to this bill of sale; and I do alienate in behalf of the said Hernandez and Chevitean, the said two tracts of land as they are at this moment, with their inlets and outlets, their services and customs, which in fact, and of right, correspond and belong to them, and as my son and myself have possessed them free from incumbrance, as it is declared by me, and certified in continuation by the register of mortgages, for the price and sum of twenty-five thousand dollars, out of which twenty thousand dollars correspond to the tract belonging to my son, and the remaining five thousand dollars to the tract owned and sold by me; and having received to my satisfaction the said sums, amounting to twenty-five thousand dollars, and being the price of the two tracts, I renounce the proof of delivery, the exception of the money not being told, fraud and others concerning the case; and by way of a greater caution, I hereby give a formal receipt for the same, declaring that the just value and price of the two tracts is as expressed above, and if they are worth, or might be worth more, of the surplus or excess, I gratuitously make to the purchasers a donation thereof, simple, perfect, and irrevocable, such as the law denominates—Donation *inter vivos*—with all the declarations, clauses, liens, and requisites for the greater consolidation thereof. In consideration of which, I separate myself, and dispossess and take from my lawful son, Don Fernando,

the right of property; and renounce possession, useful, dominion, and all other actions, real and personal, useful, mixed, and direct, which, to the said two tracts of land we had and possessed in the part and portion, which, as it has been detailed, belongs to each, as under the mentioned conditions and guarranty, I cede, renounce, and transfer the whole to the firm of Hernandez and Chevitean, or their representatives, in order that they may possess, enjoy, and alienate the same as their own as they see fit, in virtue of this bill of sale, which I execute to them as a proof of real delivery; so that it is seen that they have acquired the possession, and can keep it, without any other proof being necessary to them, from which I exonerate them; and I obligate myself to the security and execution of this bill of sale with my property, present and future, adding the guaranty clause for the punctual fulfilment thereof; whereupon I renounce all the laws and privileges which might favor me, and that which prohibits it; and we, the firm of Hernandez and Chevitean, being present, do accept in our behalf this bill of sale, showing that the two mentioned tracts of land has been sold to us in the conditions and price aforesaid, and hereby acknowledge to have received the said property, renouncing all the laws concerning the case, and for which we hereby grant a formal receipt. Done in the always faithful city of Havana, on the third of August of one thousand eight hundred and twenty. I, the Notary, certify, that I know the parties; that they thus ratified, granted and signed this, being present as witnesses, Don Raphael Garcia, Don Thomas Gomez, and Don Buenaventura Calvet.

HERNANDEZ & CHEVITEAN,
FERNANDO DE LA MAZA ARREDONDO.

Before me CAYETIMO PONTON.

I certify that the two tracts of land situated in the province of East Florida, whose owners are said to be Don Fernando de la Maza Arredondo & Son, are not, as it appears, encumbered, in the ever faithful city of Havana, 3d of August, 1820.

FRANCIS GUIBART.

Note.—It has caused no duty of alcabala, agreeable to the determination of the proceedings, which are attached in continuation. August 3d of 1820. *A flourish.*

Petition.—Señor, Superintendant, sub-delegate of both Floridas.

The house of Hernandez and Chevitean, and Don Fernando de la Maza Arredondo, to your excellency showeth: that the former have purchased of the second mentioned, two tracts of land situated in the province of East Florida, which location, dimensions, and limits, are detailed in the two titles of property which they present, and as there are no duties of alcabala established or paid for any sale that is made, to your excellency we supplicate, to direct the bill of sale

to be made in favor of the purchasers free of the payment of alcabala.

HAVANA, 7*th July*, 1820.

HERNANDEZ & CHEVITEAN.
FERNANDO DE LA MAZA ARREDONDO.

Decree.—Havana, 7th July, 1820.—Let the Administrator General inform. A flourish.

Information.—Señor, superintendant sub-delegate. By royal order the province of St. Augustine, of Florida, is exempt from the payment of alcabala, with the view of its *(fomonento)* or increase, and in consequence of the poverty of the soil. If your excellency believes that the circumstance of the sales taking place here, gives rise to some variation, you will be pleased to determine that which may be just.

HAVANA, 8*th July*, 1820. SEDANO.

Decree.—Let the tribunal of accounts inform, taking this decree as a political official communication.

RAMIREZ.

The information of the Tribunal of Accounts will be found after the *(testimonio)* or certified copy.

[TRANSLATION.]

Thirty-eight thousand and four hundred acres of land, situated on the two banks of a creek called Alligator creek, beginning at about seven miles west of an Indian sattlement, called Alligator town, leaving that interval of seven miles between the said town, and the present tract of land, for the lands of Don José Maza Arredondo; therefore, these thirty-eight thousand and four hundred acres must begin as expressed above, at about seven miles west of Alligator town, and run in the direction marked in the plat, twelve miles in length, and five miles in breadth. This creek enters in the river Suawanee, begins at Alligator town, about forty miles distant from Pen's town, and about eighty miles from Buena Vista. All these places are known under the general denomination of Alachua.

Grant to Don Fernando de la Maza Arredondo, for 14,500 acres of land on the St. Johns river.

Don Joseph Coppinger, Colonel in the royal army, civil and military governor, and head of public finance in this city of St. Augustine, in Florida, and province, on behalf of his majesty. Whereas, by a royal order, of the 29th of March, one thousand eight hundred and fifteen, his majesty has decreed to approve the gifts and rewards proposed by my predecessor, Brigadier Don Sebastian Kindelan, for the officers and soldiers, not only regulars but citizens, and other individuals of this province, who united in defence thereof in the time of rebellion, one of the said favors being a distribution of vacant lands; and in consideration of Don Fernando de la Maza Arredondo having manifested to me, the distinguished and extraordinary services which he has rendered in various employs, which he has exercised with liberality and usefulness to the royal treasury, and in duty towards his King and country, as also in the defence of the said province, when it was invaded, in the year one thousand eight hundred and twelve, as appears more fully by the memorials which he has presented to me, dated the twenty-first of March, one thousand eight hundred and seventeen, in regard to which, and in consequence of the authority which I exercise, I have thought fit by my decree of the twenty-fourth of the same month of March to grant his request; whereby, as a remuneration of his said services, there has been awarded a donation to him of thirty thousand acres of land, with titles of absolute property, which have been designated in three different places; and one of them consisting of fourteen thousand five hundred acres, is situated on the west of the river St. Johns, commencing its measurement to the north, by the old path of the Chocochati Indians whose dimensions and boundaries are known in the following manner: The first line runs south, twenty-five degrees to the west, measuring one hundred and seventy-six chains; the second line runs north 20 degrees to the west, measuring five hundred and twenty chains parallel to the river St. Johns, until it meets the road from the town of Okelawha, which road, from thence to the river, forms the last line and finishes on the same path of the Indians, as more fully appears by the plan made by Mon. Andrew Burgevin, surveyor, dated the fifth of the present month in pursuance of my decree of the eighth of June of the present year, granting to him the faculty to that effect, of and by virtue of that which is granted by the aforesaid decree of concessions of the twenty-fourth of March, one thousand eight hundred and seventeen, all of which united form the proceeding which remains in the archive of the present notary; therefore, and in reference to the same worthy services, and in compliance with the will of our sovereign, and what is imposed by the laws for awarding with distinction such as may be worthy, and in consideration of the said services, and of the persons who rendered them, I have determined to grant, and in the name of his Majesty, and of the royal justice which I administer, do grant to the aforesaid Don Fernando de la Maza Arredondo, the aforesaid fourteen thousand five hundred acres of land in the place designated,

without prejudice, to a third person, for himself, his heirs, and successors, in absolute property; and to make out to him, as by these presents I do, the corresponding titles, whereby I separate from the royal exchequer all right and dominion which it held to the said land, and do yield and transfer it to the aforesaid Don Fernando de la Maza Arredondo, his heirs and successors, that by virtue hereof he may possess it as his own, use and enjoy the same, without any encumbrance, with all its inlets, outlets, uses, customs, rights and appurtenances, which it has held and holds, and in fact and of right thereto belong, and may relate; and if it is their will to sell, cede, transfer and alienate, as they may best think fit, to all which I give my judicial authority as far as I can do, and of right ought, by virtue of what is set forth and of the will of the sovereign.

Given under my hand, and countersigned by the under written notary to the government and royal exchequer, in this said city of St. Augustine, in Florida, the ninth of August, one thousand eight hundred and nineteen.

JOSEPH COPPINGER.

By order of his excellency,

JUAN DE ENTRALGO,
Notary to the government and royal exchequer.

Conformable to the original remaining in the archives under my charge, to which I refer, and at the request of the party do sign and and subscribe the present copy on three sheets of common paper, stamps not being in use, St. Augustine, in Florida, ninth August, one thousand eight hundred and nineteen.

JUAN DE ENTRALGO,
Notary Public to the government and royal exchequer.

In his preceding information the administrator general minifests that by royal order (without citing date) the province of St. Augustine, of East Florida, is exempt from the alcabala, having for its object its increase, and on account of its poverty. That which is found in this tribunal communicated by the Secretary of State for the royal domain, of 31st July, 1818, does not relate to this point, but on the contrary it provides that the concessions of lands in Florida ought to be made to, as far as they are not opposed by the laws, denying them aleniation or transfer, particularly to strangers, to throw more light on this expedient; a copy thereof is annexed in order that the concurrence with that cited by Mr. administrator, if it exists in the secretary's office, you may with greater certainty resolve thereon.

Tribunal of accounts, 13th July, 1820.

TOLEDO BUNNTIA.

Copy.—Under date of the 27th inst., the Secretary of dispatch (dispacho) of the Department of State tells me what I here copy. Excellent sir: Under date of the 28th April last, I have by royal order communicated to the president of the council of the Indies, what follows: Excellent sir: When the king our master thought proper

sometime past, to condescend with the partition of the different territories of his dominions in Florida, to which some of his mutinous subjects pretended, it was done with the understanding, or under a belief, that these gracious gifts should not eventuate in, or be the cause of any injury, and with the view that the grantees should use them in accordance with the singulative system which governs that matter as was expressed by his majesty's very concession as communicated to the supreme tribunal to which were forwarded enclosed literal copies of their respective solicitations for its examination. In this state of things his majesty understands that the solicitious covetousness of strangers have surprised the good faith of the grantees, and intend to enter into negotiations to appropriate to themselves in whole, or in part, said gracious grants, or convert to their own use the benefit thereof, which if it takes place, in addition to the many political inconveniences, might cause great injuries to the very grantees by the nullity of their contracts, notwithstanding their good faith. His majesty, therefore, to prevent such great evils has resolved that the same supreme tribunal through which the schedules of concession have been issued, do notify to each of the interested parties in the same, the precise terms in which they are to be understood in conformity with the same act of favour, explaining it to them, in order that the general terms (generalidad con que esta consebida) in which it is conceived, (granted or conceded to the extent as far as it does not oppose the laws) may never give opportunities to interpretations, making them to understand that it is not in their power to transfer it *inagenarlo*, in part or in whole, particularly to strangers. The same which I participate to your excellency by his royal order for your intelligence and fulfilment thereof in the council, of which you will give advice to his majesty, which I transmit to your excellency from the same royal order for the purposes which may be convenient in that ministry with respect to the Indies. In the like manner, I have under date of the 19th inst., called to mind of the same council, the punctual observance of that decree, urged thereto by motive of his majesty's understanding, that contrary to the only sense and spirit of the laws, it was in agitation to alienate the laws ceded in the Floridas and transfer them to several individuals, by which his majesty's high policy would be jeoparded. The same which I transmit to your excellency for your intelligence by royal order.

God preserve your excellency for many years. Madrid, 31st of July, 1818.

Señor, Intendant of Havana. GARAY.

Havana, 30th Octr., 1818. Let it be complied with, and acknowledged. Let it be communicated to the sub-delegation of the royal domain of St. Augustine, of Florida, and that of Pensacola, when it returns to the occupancy of his Majesty's troops. Let it pass to the ministers general that it may be regestered in the office under their charge, and let them remit a certified copy to the secretary's office of this superintendency general sub-delegate.

RAMIREZ.

Note. The receipt thereof was acknowledged in the letter of the 30th Octr. of same year, 865. CARAMBOT.

Another. That it was remitted on the 11th Novr., to East Florida. CARAMBOT.

Royal tribunal of accounts, 18th Novr., 1818. Let it be taken account of ——— two flourishes ————. It was taken account of on the table of records and dues of the great comptroler of accounts of Havana, 13th July, 1820. JUAN DE CASAMOVA.

Havana, 14th July, 1820.—Let it pass for information to the minister *contador* or comptroler of the chest of Florida in this city. RAMIREZ.

Information.—Sénor, superintendant sub-delegate. Since the reception of East Florida in July, 1784, there was no sum received in that treasury for the duty of alcabala; neither to the present day, there are any receipts other than the 3 & 6 per cent. exacted from the national and strangers on importations in conformity to the last resolutions taken by the superior authority in relation thereto: And, in relation to the sales of land in that place, nothing is known to me, because they were made without the knowledge of the ministers of public domain. Havana, 15 July, 1820. TODEO ARRIBAS.

Decree.—Havana, 17th July, 1820. Let Don Francisco Gutierves de Arrayo inform. One flourish.

Information.—Sénor, military intendant *of exercito.* Among the different bounties, indulgences, privileges, and immunities, which the mercy of the king thought proper to dispense to the new colonists and inhabitants of the province of Louisiana, when, in 1776, France ceded it to Spain, the most special one, was that of freeing them of the duty of alcabala apon the same of lands, edifices, slaves, and all other objects on which it is due. The same privileges, and freedoms were granted to the inhabitants of both Floridas ever since 1781 and 1784, in which they were incorporated with the crown of Spain by right of conquest. The whole of which appears circumstantially in the different royal orders or resolutions which, by the confusion of the archives of said province, occasioned by the pillage of the vessel which was bringing them to this city from Pensacola in 1818, by an insurgent privateer, it is rendered very difficult now to find them for the use required. The grantees of lands, whether the concession were made gratuitously or otherwise, were authorised by regulations to sell or alienate them, if in the first three years of their possession they had complied with the conditions to which they were bound, to clear part of them, whether then causeways, roads and bridges—such was the practice without any embarrassments whatever—and it is not to be presumed that the royal order of 1818, which appears in these proceedings could include the inhabitants, establish-

ed for many years in Florida, but it refers to speculators, which were favoured with great grants of lands where titles were expedited in good faith by the supreme council of the Indies in consequence of his Majesty's orders; but these people, abusing the bounty, attempted to make a traffic of their concessions in foreign countries, as it was announced in the public papers of London, and those of the United States of America. The house of Hernandez, Cheavitean, and company, of this commerce, cannot be considered strangers, who have contracted for the acquisition of those of Mr. Arredondo. It is all that I could inform your lordship. Havana, 20th July, 1820.

FRANCISCO GUTIERREZ DE ARROGO.

Decree.—Havana, 21st July, 1820. In conformity of the proceeding information, let it return to the administrator general that he may expedite the bulletin required, with the exemption of the duty of alcabala with the only qualification that, when the bill of sale is made, the certificate must be presented to the government and national offices of Florida for the corresponding effect.

RAMIREZ.

Voleta or bulletin.—The notary, before whom it may happen, will, from the bill of sale, free of duties agreeable to this expedient, as it is provided by the proceeding decree.

Havana, 2nd August, 1820.

For the minister general, ELOSNA.

It is conformable to the originals thereof, which remain in the registry under my charge to which I refer: and, at the request of the party, I give the presents in the ever faithful city of Havana, 9th August, 1820. Amended—*los concesionarios*. The grantees. It is correct, attested, accorded. CAYETANO PONTON.

We, the undersigned, notary publics or escribanos, certify that Don Cayetano Ponton, by whom this preceding testimony appears to be authenticated, he is also a notary public, faithful, legal, and of full confidence, and that to his peers all faith and credit has been, and is, given in both jurisdictions.

In testimony whereof, we seal the presents with the seal of our college, in this ever faithful city of Havana, in the above date.

College of National, PHING ALVAREZ.
[L. S.] JOSE NIMOS DE CUETO.
Scriveners of the Havana. MANUEL DE AYOLA.

TERITORY OF FLORIDA, }
County of St. Johns: }

On the sixth day of July, 1829, came before Elias B. Gould, justice of the peace for said county, Antonio Alvarez, who being duly sworn, says, that he knows the character of the seal marked "No. 2, A. Hamilton," (the foregoing.) That it is the official seal of the college of notaries, of the city of Havana, in the island of Cuba,

and is an official verification of the document to which said seal is attached; and wherever so attached is received as evidence in all Spanish tribunals abroad, as well as those at the said city of Havana.

ANTONIO ALVAREZ.

Sworn before me the 6th day of July, 1829.

E. B. GOULD, *Justice of the peace.*

[No. 2.]

Exhibited in evidence by the complainant, without objection by the defendant.

This indenture made the eighth day of June, in the year of our Lord one thousand eight hundred and twenty-one, between Francisco Hernandez, of the city of Havana, in the island of Cuba, merchant, and John Joseph Chevitean of the same place, merchant, by Moses Elias Levy, of Philadelphia, in the commonwealth of Pennsylvania, their attorney duly qualified, constituted, authorized and appointed by them for that purpose by a power of attorney, bearing date on the twelfth day of November, eighteen hundred and twenty, of the one part, and Abraham M. Cohen of the city of Philadelphia, merchant, of the other part. Witnesseth, that the said parties of the first part, for, and in consideration of, the sum of thirty-five thousand, eight hundred and seventy-five dollars, to them in hand paid at, and before, the sealing and delivery of these presents, the receipt whereof they do hereby acknowledge, and themselves therewith fully satisfied, contented and paid, have bargained, sold, aliened, transferred, conveyed, and released, and confirmed, and by these presents do bargain, sell, alien, transfer, convey, release and confirm, unto the said Abraham M. Cohen, his heirs, and assigns, all that peice, parcel or tract of land, situate lying and being in the territory of east Florida, bounded as follows: situate on the west bank of the river St Johns, bounded on the north side by an old Indian path of the Chakohatu Indians, and containing fourteen thousand five hundred acres of land, more or less, which said tract of land was surveyed by Andres Burgiven, surveyor, appointed by the decree of the government of east Florida, a copy of a draft of whose survey is hereunto annexed, marked A, reference being had thereto, the boundaries, situation, and extent of the said tract will more fully appear, also a certain other tract of land, situate lying and being in the said territory of east Florida, situate on both sides of a creek, called Alligator creek, beginning at seven miles west of an Indian town called Alligator town, (leaving the said distance of seven miles between the said Indian village and the nondescribed tract) about twelve miles in length and five in breadth, that is to say two and a half miles on each side of said river, containing thirty-eight thousand four hundred acres; a plan or draft of which last mentioned tract is hereunto annexed marked B, by which the boundaries, situation, and extent of the said last mentioned tract, will more fully appear, being the tracts conveyed by Don Fernando de la Maza Arredondo, on behalf of himself and son, to the said parties, of the first part, by an instrument of writing, bearing date at

Havana, the third day of August, 1820, and confirmed snbsequently by Don Fernando the son, together with all and singular the woods, underwoods, waters, water-courses, ways, houses, fences, improvements, members, hereditaments and appurtenances, thereunto belonging, or in any wise apertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof, and also all the estate, right, title, interest, benefit, property, claim and demand whatsoever, in law or equity, of them the said parties of the first part, and of each of them, of, in, and to, the same and every part and parcel thereof, to have and to hold the said lands, tenements, hereditaments, and all, and singular, the premises hereby granted, or intended so to be, with the appurtenances, unto the said Abraham M. Cohen, his heirs and assigns to his own proper use and behoof forever. And the said Franscisco Hernandez and John Joseph Cheavitean for themselves, their heirs, executors and administrators, separately, and not jointly, do covenant, promise, and agree to, and with the said Abraham M. Cohen, his executors, administrators and assigns, that they have not jointly done, committed, or suffered any act, matter or thing whatsoever, whereby the title of the said parties of the first part, to the premises as above described has been, or can be impaired, weakened, destroyed, or incumbered, and that the said parties of the first part, each against his own acts and deeds, and against his own heirs,and all person or persons claiming under him or his heirs, all and singular the premises unto the said Abraham M. Cohen, his heirs and assigns, shall and will warrant, and at all times defend by these presents. In witness whereof, the parties to these presents have interchangeably hereto set their hands and seals the day and year first, above written.

FRANCISCO HERNANDEZ.
JO. JOSEPH CHEAVITEAN.
By their attorney,
M. E. LEVY.

Sealed and delivered in the presence of, the word "year" being first inserted in the second line—

A. A. Brown,
J. Simon Cohen.

Received on the day of the date of the above indenture, of the above named Abraham M. Cohen, the sum of thirty-five thousand eight hundred and seventy-five dollars, the consideration above named.

M. E. LEVY.

Witness:
J. Simon Cohen.

United States of America.

Be it remembered that, on the ninth day of June, Anno Domini one thousand eight hundred and twenty-one, before me, the honorable Bushrod Washington, one of the associate justices of the Supreme Court of the United States, came Joseph Simon Cohen, of the city

of Philadelphia, attorney at law, one of the subscribing witnesses to the above written indenture, who being duly sworn did depose and say that he was present and saw Moses Elias Levy, therein named, sign, seal, and deliver the said indenture, as the attorney of Francis Hernandez, and John Joseph Cheavitean, for the uses and purposes therein mentioned, and this deponent, together with A. A Brown, signed their names thereto as witnesses thereof.

J. SIMON COHEN.

Witness my hand and seal the day and year last aforesaid.

BUSH. WASHINGTON.

Recorded 18*th*, *January*, 1822.

A true copy from the records in my office.

Attest: JAMES SCOTT FINGLE.

This indenture, made the eighth day of June, in the year one thousand eight hundred and twenty-one, between Abraham M. Cohen of the city of Philadelphia, within named, of the one part, and Moses E. Levy, of the said city, of the other part, witnesseth that the said party of the first, for, and in, consideration of the sum of thirty-five thousand eight hundred and seventy-five dollars to him in hand paid, at, or before, the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, aliened, assigned, conveyed, released, and confirmed, and by these presents do bargain, sell, alien, assign, convey, release, and confirm unto the said Moses Elias Levy, his heirs and assigns, those two several tracts or peices of land described and contained in the within deed, with all and singular the appurtenances and hereditaments belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and every part thereof, and the estate right, title, interest, benefit, claim and demand, whatsoever in law and equity, of him, the said party, of the first part of, in, and to, the same and every part thereof, to have and to hold the same, and all and singular, the premises hereby granted, or intended so to be, with the appurtenances unto the said Moses Elias Levy, his heirs, and assigns to his own proper use and behoof forever; and the said Abraham M. Cohen for himself, his heirs, executors and administrators, doth covenant promise and agree to, and with, the said Moses Elias Levy, his executors and administrators, and assigns, that he has not done, committed, or suffered, any act, matter, or thing, whatsoever, whereby the title of the said party of the first part to the premises as above described and conveyed, has been, or can be, weakened, impaired, destroyed, or encumbered, and that he, against his heirs, and all person or persons claiming under him or them, all and singular the premises, unto the said Moses Elias Levy, his heirs and assigns, shall and will warrant and at all times defend by these presents. In witness whereof, the said Abraham M. Cohen hath hereunto set his hand and seal the day and year first above written.

ABRAHAM MYERS COHEN.

Sealed and delivered in the presence of

A. A. Brown,

J. Simon Cohen.

Received on the day of the date of the above indenture, of th above named Moses Elias Levy, the sum of thirty-five thousand eight hundred and seventy-five dollars, the consideration above named.

ABRAHAM MYERS COHEN.

Witness,
J. SIMON COHEN.

United States of America.

Be it remembered that, on the ninth day of June, Anno Domini, one thousand eight hundred and twenty-one, before me the honorable Bushrod Washington, one of the associate justices of the Supreme Court of the United States, came Joseph Simon Cohen, of the city of Philadelphia, attorney at law, one of the subscribing witnesses to the preceeding indenture, who, being duly sworn, did depose and say that he was present and saw Abraham M. Cohen, the grantor therein named, sign, seal, and deliver, the said indenture as his own act and deed for the use and purposes therein mentioned, and that this deponent together with A. A. Brown, signed their names thereto as witnesses thereof.

J. SIMON COHEN.

Witness my hand and seal the day and year last aforesaid.

BUSHROD WASHINGTON.

Recorded, 18*th January*, 1822.

A true copy from the Records in my office.

Attest: JAMES SCOTT FINGLE.

[No. 3.]

Exhibited in evidence by the Complainant, without objection by the Defendant.

[TRANSLATION.]

Messrs, Hernandez & Chevitean, in ac. with Fernando M. Arredonco.

Dr.				*Cr.*
1820. Aug. 3.	For 38,400 acres of land, which I sold them in East Florida, on both sides of Alligator creek, which belong to my son of the same name, as it appears by the bill of sale in the office of the *Escribano*, Ponton, of this day's date, which declares their being sold for 20 thousand dollars, but which have been sold in reality for - -	$25,000	By an order of Mr. M. E. Levy against said gentleman, of the 10th of May, paid by said gentleman, - - - -	$5,000
			By another do. of this day -	5,000
			By 15,000 lbs. of copper kettles which he has delivered me - - -	15,000
			By an obligation of Mr. M. E. Levy, payable in one and two years after the United States taking possession of said province, without any responsibility of said Messrs. Hernandez and Chevitean -	10,875
	For 14 thousand five hundred acres of land, situated on the margin of the river St. Johns, of said province, on the old path of the Chocochate Indians, belonging to me for the sum of $10,875, although in the bill of sale it expresses but for $5,000 -	10,875		
		$35,875		$35,875

Triplicate. Havana, 3d August, 1820.
Signed: FERNANDO DE LA MAZA ARREDONDO.

Bernado Segin, being duly sworn says, that the signature of "Fernando de la Maza Arredondo," affixed to the annexed instrument of writing, purporting to be an account current between Hernandez and Cheavitean and the said Arredondo, is in the proper hand-writing of Fernando de la Maza Arredondo, who is personally known to him, this deponent.

B. SEGIN.

Sworn to before me the 8th day of July, 1829.

E. B. GOULD,
Justice of the Peace.

[No. 4.]

Exhibited in evidence by the complainant, without objection by the defendant.

[TRANSLATION.]

Having agreed with Don Moses Elias Levy at the time when I sealed to Messrs. Hernandez and Cheavitean two tracts of land in the province of East Florida, who acted as agents of said Levy, the purchase being made for account of the last mentioned, that, in the case of the cession of said province to the United States of America, he was to pay me ten thousand eight hundred and seventy-five

dollars in addition to the sum specified in the bill of sale, and for which sum he made me an obligation on the 3d August, 1820. Let it be known now, that he has paid me, on account of the second instalment of said obligation, two thousand six hundred and eighteen dollars and six rials. Havana, 21st Nov., 1821.

Signed: FERNANDO DE LA MAZA ARREDONDO.
Witness: SAMUEL BETTS.

Bernardo Segin, being duly sworn, says, that the signature of "Fernando de la Maza Arredondo," affixed to the annexed document in the Spanish language, and dated Havana, 21st Nov. 1821, is the proper signature of him the said Arredondo, who is personally known to him, the said deponent. And that the signature of Samuel Betts, affixed thereto as a subscribing witness, is in the proper hand writing of Samuel Betts, also known to this deponent. He, this deponent, is well acquainted with the said signatures of Fernando de la Maza Arredondo and Samuel Betts.

B. SEGIN.

Sworn to before me, the 8th day of July, 1827,
E. B. GOULD,
Justice of the Peace.

[No. 5.]

Exhibited in evidence by the Complainant, without objection by the Defendant.

[TRANSLATION.]

To the Governor.—Don Fernando de la Maza Arredondo, a citizen of St. Augustine in Florida, but at present residing in the Havana, through the medium of his son of the same name, of this town, represents to your excellency, that he has the honor of having served his Majesty in different employs and capacities, and particularly for more than twenty years as commissary for the Indians, without pay or any emolument, which office he has discharged, with the greatest exactness and disinterestedness, to the satisfaction of all the governors of the town, in respect to the peace and good harmony with these savages; and as acting comptroller *(contrator)* of the Royal Military Hospital of this garrison, which he has likewise discharged for many years without pay and emolument, performed distinguished services, and having saved many thousand dollars to the royal treasury, as is known to your excellency, and in the royal office of this town.—Latterly, when on account of urgent affairs he obtained a discharge from these employs, withdrawing himself from the service of his Majesty to attend to other business occasioned by the increase of his family, he was employed on the service of rounds and fatigues by the acting governor of this garrison, Don John Joseph de Estradu, on account of the invasion of this province in the year one thousand eight hundred and twelve, and on account of a want of officers for said service, he remained occupied thereupon till the year one thousand eight hundred and thirteen, when, on account of having been elected by a majority of votes, and the requisite formalities, a parochial and

district elector of this province, he was obliged to proceed to the city of Havana, where he remained as one of the deputies composing the provincial assembly, and for which offices, and in the discharge of the same as a good subject, he incurred many considerable expenses, which he cheeefully lost for the good done his king and country, well persuaded that some day he should receive a remuneration for the same. In effect, it has come to his knowledge that his Majesty, by his royal order of the twenty-ninth of March, one thousand eight hundred and fifteen, has ordered rewards to be made by a distribution of vacant lands to all those individuals who appeared with arms in their hands for the defence of this said province, from the insurrection begun in the year one thousand eight hundred and twelve; and as the memorialist is one of these claimants, for this reason, and also as a settler who has augmented his family and slaves from the most early occupation of this province by the arms of his Majesty, and one of those which the laws and royal orders recommend to be respected as well in the character of first settlers, as for the distinguished services, and to be preferred in the said distribution, therefore he prays your excellency will be pleased to grant him in absolute property thirty-eight thousand acres of land, situated on both banks of a creek which empties into Suwanee river, called Alligator creek, commencing about seven miles to the west of the Indian village, called Alligator-town, which lies in a northwest direction about forty miles from Paynestown, and about eighty from Buena Vista; which places are known under the denomination of Alachua; and inasmuch as the situation and existing circumstances in this province do not permit, at the present time, a recognition of a survey and laying out of the said lands, which, moreover, could not be done on account of there being no surveyor for that purpose, as Mr. George Clark, who has been appointed by this government, has other occupations which do not allow him time to proceed to this part, he hopes from the justice of your excellency, that you will be pleased to suspend the titles of proprietorship, until your memorialist can procure the plan of the land, in order that he may know with precision the situation, limits, and other necessary points, for the more accurate knowledge of the place; and that, in the meanwhile, he may use the title of gift, which your excellency may think proper to make by your subsequent decree. It is his wish that he may hold all the necessary requisites, a favor which he promises himself from the justice of your excellency.

St. Augustine, in Florida, twenty-first of March, one thousand eight hundred and seventeen.

FERNANDO DE LA MAZA ARREDONDO, Jr.

Decree.—St. Augustine, twenty-fourth of March, one thousand eight hundred and seventeen. In consideration of the services which this party sets forth, which are manifest and notorious, and in exercise of the functions intrusted to me by law and the royal dispositions, I do grant it in the name of his Majesty and of his royal justice, which I administer, in absolute proprietorship to Don Fernando de la Maza Arredondo, the father, the thirty-eight thousand acres of

land which he solicits, in the place which he designates, without prejudice to a third person, of which there will be made out to him the proper titles of dominion, when he presents the plans made by the surveyor, and let him make use in the mean time of this decree of gift as equivalent in every respect, which, with the former proceeding, is to be registered in the archives of the government and royal exchequer, when, let there be issued to the party interested, an authenticated copy, in due form, of the whole affair, that he may verify the said gift, and use the said lands and dispose thereof as may best suit him.

COPPINGER.

Before me,

JUAN DE ENTRALGO,
Government Notary.

Conformable to the originals remaining in the archives under my charge, and to which I refer, and at the request of the party, in compliance with the decree, I seal and subscribe this present copy, at St. Augustine, in Florida, the twenty-fourth of March, one thousand eight hundred and seventeen.

JUAN DE ENTRALGO, [SEAL.]
Government Notary.

To the Governor:

Don Fernando de la Maza Arredondo, junior, inhabitant of this city, in the name, and as a general attorney of his father of the same name, domiciliated in the Havana, respectfully represents to your excellency, that, by a decree of the 24th of March, 1817, your excellency thought fit to grant to his aforesaid father, in absolute proprietorship, thirty-eight thousand acres of land in the place which is denoted and set forth in testimony, which is duly annexed. And whereas, the unfortunate circumstances of this province, has never allowed the said lands to be measured and laid off by the surveyor general, Mr. George Clarke, who has not had the least time to complete the same, he having been, and being now occupied in other objects of the government to the northward, and as your memorialist has now an opportunity of effecting the said survey by Mr. Andrew Burgerin, a person who has been commissioned by this government to supply the absence of the said Clarke, and who has refused before to explore the places where the grant is located, for fear of the hostilities of the Indians, all which is the cause that his aforesaid father has not yet the titles of dominion and proprietorship to which he is entitled by the declarations of the said 24th March, 1817: wherefore he prays your excellency may be pleased to authorize the aforesaid Mr. Andrew Bergerin, to proceed to the survey and laying out of the said lands, according to the mode specified in the grant, a favor which he hopes from the justice of your excellency.

ST. AUGUSTINE, in Florida, *the 8th of June*, 1819.

FERNANDO DE LA MAZA ARREDONDO, *Jr.*

Decree.—St. Augustine, 8th June, 1819.—Be it as petitioner, with a notation of the exceptation and oath to Mr. Burgerin, and a summons to the surrounding owners.

Certified: ENTRALGO.

At St. Augustine, on the same day, month and year, was notified the preceding decree to Don Fernando de la Maza Arredondo.

Certified: ENTRALGO.

On the same day, was notified to Mr. Andrew Burgerin, his appointment as surveyor, which he took, and on receiving the same, said, that he accepted and accepts it, promising under oath, in due form, well and faithfully to discharge his duties, and signed thereto.

ANDREW BURGEVIN.

Before me,

JUAN DE ENTRALGO.

[No. 6.]

Exhibited in evidence by the complainant, admitted by the court; but question reserved by the court, the subject to which it relates not being included in the body of the bill, but only in the interrogatories.

[TRANSLATION.]

Don Moses E. Levy,

1822. To Arredondo, *Dr.*

For your obligation relating to the plantation Hope, dated 5th March, 1822, - - - $1,500 00

1823. *Credit.*

By balance as per account rendered,	-	$90 50	
" 17 head of cattle strayed away,	-	170	
" So much paid the surveyor, & Wm. Wanton,		54	
			1,114 50
Balance in favor of Arredondo,			$385 50

St. AUGUSTINE, 12*th December*, 1823.

F. M. ARREDONDO.

Test:

ELIAS WALLEN.

Bernado Segin, being duly sworn, says, that the signature of F. M. Arredondo, affixed to the annexed instrument of writing, purporting to be a statement of account between Moses E. Levy, and said Arredondo, is in the proper hand-writing of Fernando M. Arredondo, junior, who is personally known to this deponent; and the signature of Elias Wallen, who appears as a subscribing witness, he believes to be in the proper hand-writing of said Elias Wallen.

B. SEGIN.

Sworn to before me the 8th day of July, 1829.

E. B. GOULD,
Justice of the Peace.

The testimony of Elias Wallen, taken in the above entitled cause, before Elias B. Gould, a justice of the peace, and to be read in evidence on the trial thereof by consent of the parties.

Elias Wallen being duly sworn, says, that he was acquainted with Fernando de la Maza Arredonda, junior, that the signature of "F. M. Arredondo," affixed to the instrument hereunto annexed, is the proper hand-writing of the said Fernando de la Maza Arredondo, junior, and was signed in the presence of this deponent; that the said Fernando de la Maza Arredondo, is reputed to be the son of the said Fernando M. Arredondo, the present defendant.

ELIAS WALLEN.

Sworn to before me the 26th February, 1830.

E. B. GOULD,
Justice of the Peace.

[No. 7.]

Exhibited in evidence by the complainant, admitted by the court; but question reserved by the court, the subject to which it relates not being included in the body of the bill, but only in the interrogatories.

HAVANA, 4 *de Febrero, de* 1824.

M. E. LEVY, Esq.,

Dear Sir :—I have received your favors of the 23d December, and 14th January. The commission to examine Mr. Aquilar upon Tampa tract of land, was completed and sent by Mr. Travers. The copy of the real order which made Mr. Ramirez, intendant of the two Floridas, will go now, in as full authenticated and authorized manner as can be got. The intendant never certified any document. I asked him to do it, as you will see, by my memorial copied at the beginning of the testimonies, but he would not do it. If the commissioners ask documents, that we cannot get, will be no end to this business. There is some conditions in the title, which you have sent upon Alligator creek, that I cannot submit to. That is the reason that I have not signed. My son Joseph, goes now to St. Augustine with full power and instruction to do what is necessary. In this office, does not exist the grant of Tampa land, nor can be, as never was brought here none of the documents belong to the secretary of government, nor the escrivano, in which two offices must be the said grant.

I am dr. sir, your
Most ob't serv't.
FERNANDO DE LA MAZA ARREDONDO.

N. B. Mrs. Jaura & Gay have wrote me upon what you said to them respecting your note in behalf of my son Fernando, to whom I have wrote upon the business. I wish you would discount from what is pending with him or with me, and say no more about it.

VALE, (*a flourish.*

[No. 8.]

Exhibited in evidence by the complainant, objected to by the defendant, but admitted by the court.

[TRANSLATION.]

Title of property in behalf of Don Jose de la Maza Arredondo, for twenty thousand acres of land, in the place known under the name of Alachua.

Don José Coppinger, lieutenant-colonel of the royal armies, civil and military governor, *pro tem.*, and chief officer of the department of the royal domain, in the place of St. Augustine, of Florida, and of the province thereof: whereas in a royal order of the twenty-ninth of March, one thousand eight hundred and fifteen, His Majesty has been pleased to approve the favors and bounties proposed by my predecessor, the brigadier Don Sebastian Kindelan, for the officers and soldiers, both of the regular and of the military corps, who contributed to the defence thereof in the time of the rebellion, and whereas, one of said favors consists in the distribution of royal lands, and whereas, Don José de la Maza Arredondo, captain of the militia in the Spanish company of the town of Fernandina, has represented to me the distinguished and extraordinary services which he has rendered both personally and with money towards the defence of this said province in the time of the insurrection, to the economy of the royal treasury, as a faithful subject, as is minutely manifested in his petition under date of the eighteenth instant, in virtue of which I have thought proper, by my decree of this day, to accede to his demand of twenty thousand acres of land, with the title of absolute property in the lands, known by the name of Alachua, about eighty miles distant from this place, at a spot, known under the name of Big Hammock, about twenty miles distant from Suawanee river, towards the west, about sixty miles from the river St. Johns; and as soon as there will be an opportunity, and when the tranquility of the province, then the survey of the said lands will be proceeded to, in order to designate their limits and boundary lines in a corresponding plat, as appears at large in the cited expedient which exists in the archives of the present notary; wherefore, and in consideration of the said recommendable services, and in conformity to the will of the sovereign, and to the provisions of the laws, concerning the distinguished rewards to be given to those who are entitled to them, in proportion to the nature of said services, and of the quality of those who have rendered them, I have determined to grant, as I do grant, in the name of his Majesty, and of his royal justice, which I administer, to the said Don José de la Maza Arredondo, the twenty thousand acres of land, referred to in the designated location, without prejudice to a third party, for himself, his heirs, and successors in absolute property; and I have determined to issue, as I do by these presents, issue in his behalf, the corresponding title by which I take from the royal domain, the right and dominion it had to the said tract, and I cede and transfer the same to the said Don José de la

Maza Arredondo, his heirs and successors, in order that, in virtue thereof, they possess it as their own, use and enjoy it, without incumbrance whatever, with all its inlets and outlets, usages, customs, rights and services, which it has had, has, and in fact, and of right, belong, and may relate to it, and in order, if they please, they may sell, cede, transfer and alienate the same, as may best suit them. To the whole of which, I interpose my authority, as much as I can, and of right ought, in virtue of what has been exposed, and in conformity to the sovereign will.

Given under my signature, and countersigned by the subscribing notary of the Government, and of the royal domain in this said city of St. Augustine, of Florida, on the twentieth of March, one thousand eight hundred and seventeen.

JOSÉ COPPINGER.

By order of his lordship,

JUAN DE ENTRALGO,
Notary of the Gov't. and of the Rl. Domain.

[No. 9.]

Exhibited in evidence by the complainant, without objection by the defendant.

[TRANSLATION.]

We, Hernandez and Cheavitean, merchants of this place, do declare that, on the third day of August, one thousand eight hundred and twenty, an authentic bill of sale, executed in our behalf, before Don Cayetano Ponton, by Don Fernando de la Maza Arredondo, for two tracts of land, situated in the province of East Florida, one of them containing fourteen thousand and five hundred, and the other containing thirty-eight thousand and four hundred acres, as more particularly appears in said bill of sale, which, having been issued in our behalf, because it so suited to the convenience of the true purchaser, who is Don M. E. Levy, who paid to the vendor, Don Fernando de la Maza Arredondo, the twenty-five thousand dollars, for which sum, the two tracts of land were bought, we give him this declaration, in order, that at all times, it may appear, and said Levy may prove that the said property is his, and that we have no pretention whatever to it, and that to this day it does not belong to us. In testimony whereof, and in order that said Levy may make use of it to his best advantage, we sign in this behalf this declaration, *per quatriplicates*, in the Havana, on the 10th of November, one thousand eight hundred and twenty.

HERNANDEZ & CHEAVITEAN.

TERRITORY OF FLORIDA, }
County of St. Johns: }

Antonio Rutan came before Elias B. Gould, a justice of the peace for the county of St. Johns, and being duly sworn, says, that the signature of Hernandez & Cheavitean, affixed to the above in-

strument of writing, is in the proper hand-writing of Francis Hernandez, one of the firm of Hernandez & Cheavitean, merchants, residing in the Havana in the island of Cuba; that he, this deponant, is personally acquainted with the individuals composing said firm, and knows that they were legally associated together as partners. Deponant never saw Francis Hernandez write, but, for five years and more, he has corresponded with him, and has received many letters from him. Deponant was five years in the service of the said Hernandez & Cheavitean.

A. RUTANT.

Sworn to before me this 18th day of June, 1829.

E. B. GOULD, *Justice of the Peace.*

[No. 10.]

Exhibited in evidence by the complainant, without objection by the defendant.

Here comes the plat of the Alligator creek tract of land, set out in the foregoing part of this record, and marked "A. E. B. Gould." *Also* the certificate of Andrew Burgevin, surveyor, in relation to the survey of said tract, which is also set forth in the foregoing part of this record—the same being set forth in evidence numbered I.

[For copy of original *Plat* see page 110, manuscript.]

[TRANSLATION.]

Don Andres Burgevin, surveyor, named by this government by the decree of twenty-first day of June, of this year. I certify that I have measured and delivered to Don José de la Maza Arredondo, a tract of land containing twenty thousand acres of land, situated on both margins of a creek known by the name of Alligator creek. Said tract begins somewhat to the east of the head of said creek, comprehending or including a site of an Indian town, distant about eighty miles from the part of Buena Vista, and about forty to the northwest of the town of Payne. The first line runs north 20°, to the west 357 chains, which commences with a pine tree marked ⋈, and ends with another, marked ≡; the second line runs south 70°, to the west 560 chains, and terminates with a post. The third runs south 20°, to the east 357 chains, and terminates in a pine marked I; and the fourth runs to the north 70°, to the east 560 chains; being, in all its circumstances, in conformity to the plan which is herewith attached. To confirm which, I give these presents, which I sign in St. Augustine, of Florida, 14th September, 1819.

(Signed) ANDREW BURGEVIN.

It is a copy of the original to which I refer.

(Signed) ANDREW BURGEVIN.

The testimony of *Britton Knight*, taken in this cause, before Elias B. Gould, Justice of the Peace for St. Johns county, and to be used in evidence on the trial thereof.

Britton Knight being duly sworn, says that he knows a creek called Alligator, but not connected with Suwanee river; is acquainted with some parts of the country on the Suawanee, but not all; knows where Alligator town is, and is acquainted with all the water courses that leads to the Suawanee. There is no water course known by the name of Alligator, running into the Suawanee. Alligator town is about fifty-six miles northwardly, and perhaps a little west of Payne's town, and about twenty-two miles east of the Suawanee. There is no water course running from Alligator town to the Suawanee. He has been all around Alligator town. This town was an Indian village, and situated on the northeast end of a lake. Witness knows of no place where the plat A and B could be located at Alligator town, or between that and the Suawanee, or near there. The country there is mostly pine, with here and there a small hammock: no one exceed 640 acres, and those were principally around the lake. He was all through that country, looking for land, and knows the quality of it.

Witness says that there is a small creek, within the grant to Arredondo & Son, known as the Alachua grant, named Alligator creek by Gen. Harris' party, in 1814, from the circumstance of there being an alligator in it—which creek empties into the Tuscawilla lake—upon which creek Gen. Harris made a location, corresponding in shape with the plat B, containing 3,000 acres. Witness assisted to survey it, and signed the warrant.

Cross Examined.—Witness knows a river called Santafee, running into the Suawanee; it does not run near Alligator town. There is a creek, called Alligator creek, which runs into the Santafee. This creek empties into the Suawanee. Santafee is about thirty miles from Alligator town. Never understood that Alligator creek run under ground any where in that country. Gen. Harris had no grant of land from the Spanish government.

By Complainant.—The nearest point of Alligator creek is thirty miles from Alligator town. Alligator creek is still further. About five miles from the head of Black creek, a creek, called Alligator, rises, and runs fifteen miles west, and empties into Sampson pond, and then takes the name of Sampson river for five miles, running a southwest course, till it empties into the Santafee ten miles above the natural bridge. From Payne's town to Sampson river is a northeast course. Both Sampson river and Alligator creek run through low pine woods, no hammock whatever being about there. Neither of the plats could be located on them.

BRITTON KNIGHT.

Sworn to before me 24th November, 1829.

E. B. GOULD, *Justice of the Peace.*

[No. 11.]

Exibited in evidence by the complainant, and read without objection by the defendant.

The deposition of Reuben Charles, taken in this case before Elias B. Gould, justice of the peace, for the county of St. Johns, and to be read in evidence on the trial of this cause.

Reuben Charles, being duly sworn, says, that he was employed in the year 1824, he thinks, by Mr. Levy and Mr. Joseph Arredondo to search for a tract of land. Witness started, and went as far as Sanfalasco, in company with Mr. Arredondo and Mr. Levy, in the spring of that year, with the view of going to Alligator town to look after a tract of land, which he understood Mr. Arredondo had conveyed to Mr. Levy. The grant was said to be large, 28 or 38,000 acres; does not recollect which; at Sanfalasco the party concluded to return in consequence of heavy rains. During that summer witness went again, for the purpose of examining the said tract of land, taking a negro with him, being employed by the aforesaid Levy and the said Joseph Arredondo. Witness went about twenty miles in a northerly course from the natural bridge on the Santaffee, that being agreeable to his instructions. This was about fifty miles northwesterly from Paynestown. The land there was pine land and palmetto generally, but, near to Alligator town, a number of small hammocks, broken by ponds and pine lands. Witness encamped at Alligator town about a week, and examined the country all around. There was a cluster of hammocks about seven miles in length, and about two miles in width. These hammocks were broken and divided by ponds, some larger and some smaller. Some of them about a mile in length and down to the smallest size—separated also by skirts of pine land. Witness does not think he could get two hundred acres of land in these hammocks without being interfered with by ponds and pine lands; some of the hammocks not exceeding forty acres. There is no stream of water running in a westerly direction into the Suawanee. There are a number of little streams running into the pond, but none running out of them. The lands outside of the hammocks, between Alligator town and the Suawanee, west, is poor pine land, and palmetto and bay galls, except two hammocks, one about one hundred acres, and the other, three or four hundred acres; but near these hammocks a little pretty good pine land. It is called eighteen miles from Alligator to them, and they are about eighteen or twenty miles west to the Suawanee. Witness is intimately acquainted with this section of country, and has been over it frequently. He resides at the Suawanee ferry, thirty or thirty-six miles west from Alligator town. Joseph Arredondo is reputed to be the son of Fernando M. Arredondo, senior. Witness is acquainted with the Santaffee river, but does not know its sources. There is no other Alligator creek or town between Payne's and the Alligator town that he has been describing.

Examination by defendants.—Alligator town consisted of a considerable of an old field and a number of houses, in ruins, not inhabited. They were Indian huts. The Santaffee empties into the Suawanee

thirty or thirty-five miles below the ferry, and about thirty miles southwest of Alligator town. Witness examined the country all around Alligator town then and since then, and saw no creek called Alligator creek. Saw also Mr. Edwards at Alligator town, and two men of the name of Auctern, of whom witness inquired. Mr. Edwards rode with witness two or three days, and gave him what information he could. Witness has seen Vignole's map of Florida, since he examined the land. Alligator town is about twenty miles from Bellamy's road. The big pond spoken of sinks. The others he knows not whether they sink or not. Witness has never heard or seen of Alligator creek in that section of country.

REUBEN CHARLES.

Sworn to before me, the 13th day of February, 1830.

E. B. GOULD,
Justice of the Peace.

[No. 12.]

Exhibited in evidence on the part of the complainant, and read without objection by the defendant.

The evidence of John Lee Williams, taken in this cause, on behalf of the plaintiff, and to be read in evidence on the trial thereof, by consent of the parties.

John Lee Williams, being duly sworn, says, that he has some knowledge of surveying, is now collecting materials for a map of East Florida, and is generally acquainted with the face of the country on the east side of the Suawanee river. Witness does not know of any creek between the Santaffee and Suawanee, that empties into the Suawanee, by the name of Alligator, except some very small streams; the largest of which is seven or eight miles, and rises in some ponds near the road that passes from Charles' ferry. It runs in a northwest direction. Witness has seen a place on Alligator pond, that was called Alligator town, which he has understood was an Indian settlement. This place is about fifty or sixty miles from Paynes in about a northwardly direction. Alligator pond is about twenty miles from the heads of the stream spoken of above. This Alligator pond, on which Alligator town was situated, is a sink hole, in which, in the dry seasons, five little brooks empty in, but in wet weather it overflows, and the pond is then about three miles in extent. There is no stream that runs from this pond in any direction. The little streams all tend to this pond and terminate there. Alligator pond is about thirty miles from Suawanee river. There are no streams between Alligator pond and Suawanee river, that are of much size that empty into the Suawanee, except the one already described, which he knows or could hear of.

Witness, states that about Alligator pond, there are some good hammocks; and, within two or three miles of it, there are some small hammocks, containing forty or fifty acres, and these are the largest that he could hear of. These hammocks lay immediately on the banks of the pond, and within the compass of three miles around it. The lands west and northwest are generally high rolling lands, sandy and wooded with pine, and known as poor pine barren lands.

The lands about the streams above spoken of, as emptying into the Suawanee, is low, pine, barren land. On the heads of it there is some hammocks, small but good. Witness has seen no lands answering to those described in the plats now exhibited, A and B, and indorsed E B G; and, from all that he has seen and learnt, the country is poor between the Santaffee and the Suawanee.

By the Defendants.—Witness visited the country all around Alligator town. There is a creek called Alligator creek that empties into the Santaffee, having first passed into Sampson pond; it rises about one mile southwest of Kingsly's pond, and runs about seven miles, and runs into Sampson's pond; and, from his pond, there is an outlet of about three miles into the Santaffee. This creek is about twenty-five miles from Alligator town.

By the Plaintiff.—Alligator creek runs in about a southwesterly direction, and is in a southeast direction from Alligator town, and is last of north from Payne's town. It is a sandy pine barren country generally on, and around, all the creeks spoken of. There is no hammock at the head of Alligator creek; but some small hammocks and a considerable swamp where it empties into Sampsons pond. The swamp is not fit for cultivation.

JOHN LEE WILLIAMS.

Sworn to before me, the 25th February, 1830.

E. B. GOULD,
Justice of the Peace.

[No 13.]

Exhibited in evidence on the part of the complainant, and read without objection by the defendants.

The testimony of Peter Mitchell taken, and to be used in evidence in the trial of the above cause, before Elias B. Gould, justice of peace for the county of St. Johns.

Peter Mitchell, being duly sworn, says, that the Alachua grant of land was owned, in 1821, by the New York Company, Peter Mitchell and Fernando de la Maza Arredondo, and his son Joseph Arredondo; that, in 1822, Mr. Levy, the plaintiff, became interested; and witness understood that he owned one-eighth part of the whole tract, that is, one half of M. Arredondo's interest. Fernando M. Arredondo, junior, was here about that time, and acquiesced in all that Mr. Levy did in relation to the general interest respecting the said Alachua tract. About the end of the year 1822, went to New York, and had it in charge to promote the general objects in relation to the settlement of the grant, one of which was to procure settlers; another was to open a public road. Mr. Levy had a power of attorney from witness, authorizing him to promote a division of the several interests. Witness assented to every thing that Mr. Levy did in New York respecting said tract. Witness states that several settlers were sent. He also assented to an assignment of three cents upon each acre of said land, that was made in New York, as witness believes.

PETER MITCHEL.

Sworn to before me, this 1st day of March, 1830.

E. B. GOULD,
Justice of the Peace.

George Gibbs, being duly sworn, says, that in the year 1821, as near as deponent can recollect, the son of him, (this deponent,) George Kingsley Gibbs, went upon an expedition with Andrew Burgevin to the Alachua, for the purpose of surveying lands on Alligator creek, for the plaintiff in this suit; that deponent's son and the party were gone several days, but returned without having surveyed the lands, because the Indians would not permit them to go far enough to ascertain where said lands were. Knows that said George K. Gibbs received fifty dollars for his services. The said George K. Gibbs is now dead. The party consisted of the said Gibbs and Burgevin, and several attendants and guides.

GEORGE GIBBS.

Sworn to before me, the 10th day of July, 1829.

E. B. GOULD,
Justice of the Peace.

Mr. Rodman, on the part of the defendants, admits the annexed deposition of George Gibbs, esq., and the said George Gibbs being duly sworn, further says, that neither before, nor at the time he went on the expedition mentioned, did he, the said George K. Gibbs, make any further excursions into the country to the westward; that the place where the said George K. Gibbs [went,] was at Wanton's in the Alachua.

GEORGE GIBBS.

Sworn to before me the 1st of March, 1830.

E. B. GOULD, *Justice of the Peace.*

[No. 14.]

Exhibited in evidence on the part of the complainant, without objection by the defendants.

[Translation.]

General power of attorney.

Be it known, that I, Don Jose de la Maza Arredondo, an inhabitant and merchant of the province, for myself, and in the name of the firm of Don Fernando de la Maza Arredondo and Son, which I represent, do give and grant all our power, ample and sufficient, as the law requires and may be necessary, to Don Fernando de la Maza Arredondo, junior, an inhabitant of this place, in order that in our name, and representing our own persons, rights and actions generally, he may act, demand, receive and collect judicially and extra judicially, from all and every persons of whatever conditions, quality and and state they may be, the sums of money, gold, silver, jewels, slaves, merchandize, goods and other effects, which may be due to us now, or might be due hereafter in virtue of documents simple or public, or without them, although no specification is here made of the debts, nor of the causes and reasons for which they proceed, nor of their quality, quantity, time and form, and other circumstances necessary in law, because under the generality of this clause, we comprehend every specification which may happen; and in order that he may demand and receive accounts from our debtors, and other per-

sons who have to give them to us, make charges to them and admit their discharges, with approbation and contradiction of the several counts, until the conclusion or liquidation of the balances, which he may collect and receive accordingly; and, in order that in case of any doubt, which he could not well adjust, he may leave the case to judges, arbitrators, and umpires, to be resolved and determined by them; and by whose determination we obligate ourselves to abide. And in order that he may administer every and whatever property belonging to us, real or moveables, or having the faculty of locomotion, sell and buy, rent out and mortgage in the prices and terms agreed upon, grant deeds, receipts and acquitances when necessary, and which we approve and ratify, as if we were present at the time of the execution thereof; and, in order that he may defend us in all our suits, causes and affairs, civil and criminal, ordinary and executive, sued for, or to be sued, demanding and defending, and presenting documents, deeds, witnesses, testimonies, certificates, proofs, due bills, accounts, balances and perquisites, attend to the presentation and oath, and take cognizance of the allegations of the adverse party, offer exceptions and faults, approve allegations and persons, give a hearing to acts and sentences, interlocutory and definitive, assent to what is favorable; and, on the contrary, appeal and supplicate where of right he may and ought, follow the gradation and desist from it, except to judges, counsellors, clerks, and other officers, prove the cause of their exceptions, or abandon them as he sees fit; and finally, in order that he may proceed, act and do whatever may be in our favor, so that he may not cease to act for want of power, clause, requisite, or precise circumstance, as for every thing, for we give it to him sufficient and without limitation, with free, frank, and general administration, incidents and dependencies, faculty to sue, swear, compromise, substitute, revoke substitutes, and appoint others, giving a discharge in form. And for the security of all his acts, we obligate ourselves without property, present and future, submitting to the authority of the justices of his Majesty, in order that they may compel us to the fulfillment thereof, as by bond in judgment, having the authority of a thing tried and determined. Whereupon, I renounce all the laws, immunities, rights, and priviliges which may favour us, and the general law in form which prohibits it.

In testimony whereof, this is done in the city of St. Augustine, of Florida, on the twenty-sixth of June, one thousand eight hundred and fourteen. I, the notary, certify that I know the party, who signed in the presence of Don Jose Bernardo Reyes, Don Pedro Miranda, and Don Jose Marraino Hernandez, witnesses and inhabitants of this place. JOSE M. ARREDONDO.

Before me,

JUAN DE ENTRALGO, *Notary of the government.*

[Rec. XXXIX.]—9.

[No. 15.]

Exhibited in evidence by the complainant, without objection by the defendant.

[TRANSLATION.]

General power of attorney.

Be it known, that I, Don Fernando de la Maza Arredondo, an inhabitant of this city, do grant and give all my power, ample and sufficient, as far as the law requires, as is necessary to Don Fernando de la Maza Arredondo, my son, also an inhabitant of this place, in order that in my name, and representing my own person, rights and actions, he may act, demand, receive and collect judicially, or extra judicially, all and every sum of money, gold, silver, jewels, slaves, fruits and effects which may be due to me now, and might be due hereafter by deeds, due bills, balances, inheritances, donations, consignments, bills of lading, or by whatever other title or reason, although here no specification is made of the quantities, effects, nor of the persons who may be indebted to me therefor; that he may demand from them, and receive accounts, and to them make charges, admit such as may be just, appoint arbitrators and umpires to resolve and determine the doubts and difficulties which may take place; and that for the net balances which may result in my favor, he may grant receipts, acquittances, settle and demand, certify the delivery, renounce the laws thereof, those of the proof, and others concerning the case; and in order that he may administer all and every property of mine, real or moveables, and have the power of locomotion, sell and buy, let out and mortgage, for the prices agreed upon aad adjusted, execute deeds, receipts and acquitances, which may be necessary, and which I approve and ratify, as if I was present to the execution thereof; and that he may defend me in all my suits, causes and affairs, civil and criminal, ordinary and executive, sued, or to be sued for, against any person whatever, demand and defend, present documents, deeds, witnesses, testimonies, certificates, proofs, due bills, accounts, balances and other requisites, cause the allegations of the adverse party to be presented, and sworn to, offer objections and exceptions, approve facts and persons, give hearing to acts and interlocutory sentences, and those that are definite, assent to what is favorable, and appeal from what is not so, solicit where he can, and ought, follow the gradation or accede from it, except against judges, counsellors, clerks and other officers, prove the causes of his exception, or desist from them as he may see fit; and finally, that he may proceed, act and do whatever may be to my advantage, so that not for want of power, clause or any precise circumstance, he may cease to act, as for every thing, I give him power, sufficient and without limitation, with a free, frank, and general administration, incidents and dependencies, faculty to sue, swear, compromise, substitute, discharge substitutes, and appoint others in a formal manner; and for the security of all his acts, I obligate myself and my property, present and future, submitting to the power of the justices of his Majesty, in order that they compel me to the fulfilment thereof, as by

sentence assented to, and having the authority of a thing already tried and decided. Whereupon, I renounce all the laws, immunities, rights and privileges, which may favor me, and the general law in form which prohibits it.

In testimony whereof, this is done in the city of St. Augustine, of Florida, on the fifth day of February, one thousand eight hundred and twelve; and I, the notary, certify that I know the grantor who signed in the presence of Don Juan de Entralgo, Don Bernadino Sanchez, and Don Francisco Rovira.

FERNANDO DE LA MAZA ARREDONDO.

[No. 16.]

Bernado Segin, a witness duly sworn in open court on behalf of the complainant, states—

That he was a resident here under the Spanish Government. Juan de Entralgo was escribano here under the Spanish Government. I think his fee for drawing a royal title was $4. Concessions were not drawn in his office. F. M. Arredondo, junior, used to be engaged in the Indian trade. F. M. Arredondo, senior, also traded with the Indians. F. M. Arredondo, senior, stood high with Spanish authorities here, had the character of a respectable and intelligent man. I was born in this country. I first saw Mr. Levy in 1821; do not recollect to have seen him before that time. I was generally engaged in some of the public offices. Witness states that F. M. Arredondo came here in 1784, at the cession of this province from Great Britain to Spain.

John Lee Williams, a witness duly sworn in open court on behalf of the complainant, states—

That he has visited the country from six miles west of Alligator town, to the Suawanee river, and that he should not think lands between these points of any value; that a tract of 38,000 acres of land between these points, he thinks would be a burthen to the owner, if subject to taxes; would not be willing to give more than ten cents an acre for land between these points. Mr. Edwards told witness that the Suawanee river was eight miles from Mr. Loper's house. On examination of the surveyor's field notes it is found, that the 1st township to wit, township 4, range 16, is composed altogether of 3rd rate land (pine,) which is stated by the witness, Mr. Williams, to indicate the poorest quality of pine land in the territory; that the next township lying west, to wit, township 4, range 15, according to the surveyor's field notes, appears to be all pine land—22 sections of it being of the 3rd rate, and 14 of the second rate, being the medium quality of pine lands as stated by Mr. Williams. In the next township to wit, township 4, range 14, is the same quality of land as in the township mentioned above, as stated by the witness. The witness thinks that these three townships being pine lands of the 2nd and 3rd rate, are of no value. The witness thinks that these three townships would contain all the land included in the plat made by Mr. Burgevin.

Testimony, taken and read in this cause on the part of the defendants, to wit:

No. 1.

Exhibited on the part of the defendants. This is the *petition* and *order for survey* of the Alligator creek tract of land, and will be found part of the evidence exhibited by the complt.

No. 2.

Exhibited in evidence on the part of the defendants. This is the *certificate of survey* and *plat* of the Alligator creek tract of land as made by Andrew Burgevin, surveyor, and will also be found as a part of the evidence exhibited by the *complainant.*

No. 3.

Exhibited in evidence on the part of the defendants, without objection by the complainant.

This commences with the plat below marked A, and also has attached the plat of the Alligator creek tract of land marked B, which is set forth in the foregoing part of this record.

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rksman, James Private, James Sparksman, and Isaac Johns, wit-
nesses to be examined in the above entiled cause, on the part of the defendants, before Waters Smith, esq., as commissioner by consent of parties.

Interrogatories to be administered to Samuel Y. Garey, William

To William Sparksman, James Private, James Sparksman, and Isaac Johns.

1st Interrogary.—Did you accompany Horatio S. Dexter to view the country and land bordering on the Santafé river, and Alligator creek, sometime in the beginning of last month, and do you reside near the said creek, or at what distance from it, and where?

2d. Are you acquainted with a certain tract of land that was located by the American General, Harris, and some 50 or 60 of his followers in the year 1812 to 15? If so, please to state where that tract of land is situated, and the nature, and quality of it. Is the land generally of the same nature and quality on both sides of Alligator creek, or of that branch of said creek formerly called Alligator, and now called New river? When was this last name given to it? Is it or not the principal creek which, with the creek now called Alligator, empties into the Santafé river? Does or not the said Santafé discharge itself into the Suawanee river? What is the distance from the said Alligator creek, now called New river, in a north line, and the extent from where it empties into the Santafé to its northern limits? What is the whole length of this creek called now New river? Where is Sampson river? What is the distance of that river to the source of Alligator creek, that is now called New river, to the St. John's river in an eastern course? How many families are there settled on the land on each or either side of Alligator creek, now called New river, and what are their pursuits, occupation, comforts and conveniences of life? What do they raise on the land?

3d. Were you one of the party attached to the said General Harris? Are the settlers on the said creek now on what was called General Harris' location? Are any of his party now among these settlers? If so, how many?

4th. Please to look at the copy of the plat marked B, hereunto annexed, and declare whether it truly exhibits the said location of said General Harris.

5th. What is the distance from the said location on the Tampa Bay road to Santafé bridge? What is the distance northwesterly from Santafé bridge to what is called New river, formerly called Alligator creek, and from the latter to Micanope, or the present residence of Wanton at Alachua?

6th. Please to look at the plat or sketch marked A, hereunto annexed, and declare whether it be a true and correct delineation of the part of the country therein mentioned and exhibited.

7th. If there be any other matter or thing within your knowledge material to the benefit of the defendants in this case, please to state the same as particular as if you were specially interrogated thereunto.

To Samuel Y. Garey.

1st Interrogatory. Are you acquainted with the country bord- ing upon Alligator creek and the Santafé river? If so, please to look at the plat or sketch marked A, hereunto annexed, and declare whether it be a true representation of that part of the country it exhibits.

2d. Do you know of the change in the name of Alligator creek, or one of its branches, to that of New river? If so, please to state when that change of name took place, and point out what part or branch of the said Alligator creek is now called New river. What is the extent of that part of said creek, that is, what is now called New river, and where does it discharge its waters? What distance is it from the other branch now called Alligator creek in a northerly course. What is the general quality of the land on both sides of the Alligator creek, now called New river, and the kind of timber or wood on it? What number of families are settled on the said New river, and what is their occupation, comforts and conveniences?

3rd. If there be any other or thing, within your knowledge, that may be beneficial to the defendants in this cause, please to declare the same as particularly as if you were specially interrogated thereunto.

J. RODMAN,
Solicitor for Defendants.

Cross Interrogatories.

Cross Interrogatories to be propounded to William Sparksman, Samuel Y. Garey, James Private, James Sparksman, and Isaac Johns:

1st. If you state that you accompanied Horatio S. Dexter, to view the country and land bordering on the Santafé river, and Alligator creek, be pleased to state whether you and the said Dexter did view the land and country bordering on the Santafé and Alligator creek; and whether you examined any other than the land bordering on the Santafé and Alligator creek, and when this examination was made; and whether there were any other, and what other persons in company with you and the said Dexter on that occasion.

2d. Did you and the said Dexter examine the land situated on the creek or river called New river? If you did, be pleased to state how you examined it; how long you were engaged in such examination; and whether you were in company with the said Dexter during all the time he was engaged in examining the land at New river; and whether you had ever examined the lands on New river before.

3rd. Did the said Dexter examine or traverse the whole extent of New river, and if he did so, how long was he engaged in such examination?

4th. Did the said Dexter chain, or in any other manner measure the length of New river?

5th. Did the said Dexter explore or examine the whole of the lands bordering on New river? Did he examine any considerable part of them?

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6th. Does not the creek which is called Alligator creek, also bear name of Sampson's creek, or Sampson's river, for a short part of

7th. Did you know whether New river (on which on the plat marked A. Harris' location is laid down) empties into the Santafé? Were you ever at its junction with the Santafé? *Was the said Dexter* at its junction with that river, while you were with him?

8th. What is the length of New river? Do you know its length from actual observation?

9th. What is the distance between New river and Alligator creek at their junction with the Santafé?

10th. Are there any hammocks or good lands on New river? If there are, are they not in small detached hammocks or spots? What is the ordinary size of these hammocks? What is their usual distance apart? What kind of land lies between them?

11th. Did you ever know New river to be called by the name of Alligator creek, except by Horatio S. Dexter? Did it ever commonly bear that name? If it did, when, and for how long a time?

12th. How far apart are Alligator creek and New river from each other at about two mile from the Santafé?

13th. What was the size of the location made by General Harris on New river? How many acres did it contain? Did Harris make any other locations or surveys in East Florida? When did he make them?

14th. At what time, in what year, was Harris' location on New river made? Was it marked off? Are any marked trees made under Harris' direction, for the purpose of locating lands, now to be seen on New river?

JOHN DRYSDALE, *Plaintiff's Sol.*

COUNTY OF DUVAL, *ss.*

I, Waters Smith, appointed a commissioner to take depositions on the interrogatories and cross-interrogatories hereunto annexed, do solemnly swear that I will faithfully execute said commission, and truly act as a commissioner in said cause, in taking the said depositions.

WATERS SMITH.

Sworn to this 12th day of April, 1830, before me.

JOSEPH L. SMITH.

On the fifteenth day of April, A. D. 1830, personally appeared before me Waters L. Smith, commissioner to take depositions on the interrogations and cross interrogations hereunto annexed: *Samuel Y. Garey*, who having been duly sworn true answers to make—

To the first interrogatory says, he is not acquainted with the country bordering upon Alligator creek, further that he has seen it passsing the road; neither is deponent acquainted with the lands on that part of Santafé river laid down on sketch hereunto annexed, marked A; deponent having examined the sketch marked A, states that he

does not consider it a true representation of that part of the country laid down as Harris' location.

To the second interrogatory, witness answers, that he does not know that New river was ever called Alligator. New river is about sixten miles in length; deponent knows that extent of it. It discharges its waters into the St. Taffé as witness believes. From where the public road crosses Alligator creek to new river, is a course west of north; the distance is about eight or nine miles. Deponent as before stated, does not know that New river ever was called Alligator. He is not acquainted with the character of the lands on the north and west side of New river; but, on the south and east side, the margin is generally low swamp, and adjoining the pine lands are small hammocks. The pine lands are, generally, very superior quality. The timber on the swamp lands, are elm, ash, white oak, live oak, sweet gum, and canepoles—a considerable growth. On the hammock, live oak, hickory, red oak, and such as generally grow on high hammock. The swamp land is superior to the hammock. The number of families settlers on New river is nine. They seem to be usually comfortable.

To the third interrogatory, witness says, he knows nothing further on this subject.

SAMUEL. Y. GAREY.

Sworn to and subscribed before me, this 15th day of April, 1830.

WATERS SMITH, *Commissioner.*

Answer to Cross-Interrogatories.

To the first cross-interrogatory, witness says:

That, on the 6th inst., he, in company with Horatio S. Dexter, William Sparksman, James Sparksman, and James Private, (the latter person was part of the time in company,) reviewed the country and lands on the south and east side of New river.

To the second cross-interrogatory, witness answers:

That he and Dexter did examine the land on New river, by riding over it in various directions, and walking through the low swamps. We were engaged in the examination about six hours. Witness was in company with Dexter all the time he was engaged in the examination. Never before examined the lands on New river.

To the third cross interrogatory, witness answers:

He does not think Dexter traversed the whole extent of New river, as witness was with him the whole time; and we traversed about eight or nine miles on the river. Last summer witness was on a part of New river, which he thinks was sixteen miles from where this examination took place. Dexter was engaged in this examination the same length of time, as witness says, about six hours, possibly something longer.

To the fourth cross interrogatory, witness answers:

Dexter did not chain or measure New river as he said.

To the fifth interrogatory, witness answers:

Dexter did not examine the whole of the lands; he was not on the

north and west side. He examined the same as witness, and left there with him.

To the sixth cross-interrogitory, witness answers:

He never heard that it did. What is generally known as Sampson's river, runs in a different direction.

To the seventh cross-interrogatory, witness answers:

That he never was at the junction of New river, and St. Taffee, but has no doubt that New river discharges its waters into the St. Taffee. Dexter was not at its junction while witness was with him.

To the eighth cross-interrogatory, witness answers:

Witness knows sixteen miles of New river, but cannot state, from his own observation, further.

To the ninth cross-interrogatory, witness answers:

He does not know.

Answer to the tenth.

There are hammocks and good land on New river—the hammocks are small and detached from each other by pine lands; the hammocks are from six to ten acres or thereabout; their distances apart are various, from half a mile to a mile an a half, good pine land lying between them; this relates to the south and east side of New river, witness not having been on the other side.

To the eleventh cross-interrogatory, witness answers:

He never knew of New river being called Alligator. The only name he ever knew for it was New river.

To the twelfth cross-interrogatory, witness answers:

That he cannot precisely say, but thinks that two miles; and from New river to Wanton's or Micanope, is about thirty-eight or forty miles; from St. Taffee the distance would be sixteen miles or more; at six from St. Taffee, about ten miles; but this a mere matter of judgment.

To the thirteenth cross-interrogatory, witness answers:

He does not know that General Harris ever made a location on New river. Witness knows nothing of Harris' location or survey.

To the fourteenth cross-interrogatory, witness answers:

He knows nothing.

SAMUEL Y. GAREY.

Sworn to and subscribed before me, the 15th day of April, 1830.

WATERS SMITH, *Commissioner.*

On the sixteenth day of April, A. D., 1830, personally appeared before me, Waters Smith, commissioner, to take testimony in the case hereunto annexed, in which Moses E. Levy is plaintiff, and Fernando M. Arredondo and Juan de Entralgo, defendants, William Sparkman, who being duly sworn true answers to make to the interrogatories to be propounded—

To the first interrogatory, answers:—He accompanied Horatio S. Dexter to view the country and land bordering on the Santaffee river. It was on, or about the sixth of the present month. Witness resides ten or twelve miles from the place where they went to view the lands.

To the second interrogatory, witness answers:—He knows nothing

about the lands or location inquired of. The lands on New river are of about the same quality on both sides. Witness never knew this by any other name than New river. Never knew it called Alligator. Witness never knew of New river, until about the time of the change of flags. Possibly a little before, when it was found by the Americans hunting their cattle, and they knowing no name for it, called it New river. New river is larger than Alligator, and they both empty into Santaffee, as witness believes. He never was at the junction, but so near that he is satisfied of the fact. Witness cannot, of his own knowledge, say, that the Santaffee empties into the Sawanee, but he has no doubt it does. Cannot say what is the length of New river. Witness is pretty well acquainted with it for about fifteen miles. Sampson river runs from Sampson pond, and empties into the Santaffee river about fifteen miles above where New river empties. Across from Sampson to New river is about six miles. Witness thinks the distance from the source of what is called New river, to the St. John's river, is from thirty to thirty-five mils, running a direct course. Thinks a due east course might be forty miles or more. Nine families are settled on New river. Seven families are settled on the south, and two on the north side; most of them are endeavouring to raise corn and potatoes. They are all situated much as new settlers in other parts of this country; most of them having settled there last winter. All new settlers but two. There is no plantation which has any open land, but Washington's, that is, that not any open land of any consequence.

To the third interrogatory, witness answers:—I was one of General Harris' party, and remained with them some time; knows nothing about his location. Witness knows but one of the settlers, who was of Harris' party. viz: Morgan Private.

To the fourth interrogatory, witness answers.—Witness has before answered that he knows nothing of Harris' location.

To the fifth interrogatory, witness answers:—The distance in a direction about northwestwardly from Santafé bridge to New river, is about ten or twelve miles, and from New river to Wantons' or Micanope, is about thirty-eight or forty miles.

To the sixth interrogatory, witness answers:

That he has examined the plat or sketch hereunto annexed, marked A, and says that it is not a correct delineation of the country examined by witness in company with Horatio S. Dexter; it is turned wrong side up; it is not correct.

To the seventh interrogatory, witness answers:

He knows nothing further material for him to state.

WILLIAM SPARKMAN.

Sworn to and subscribed before me, this 16th day of April, 1830.

WATERS SMITH, *Commissioner.*

Answers to Cross-Interrogatories.

To the first cross-interrogatory, witness answers:

A part of this interrogatory is answered by the answer to the first direct interrogatory. In company with witness and Horatio S. Dexter,

were Samuel Y. Garey, and James Sparkman. Examined no land but what is mentioned in the answer to the first direct interrogatory.

To the second cross-interrogatory, witness answers:

That he and them, in company with him, examined the lands by riding and walking over it in different directions. They were engaged in the examination the principal part of one day, the time of the examination referred to. Witness was all the time with Dexter. Cannot say if Dexter examined the lands at any other time or not. Witness has, before the day referred to, examined the lands on New river with a view of settling on them.

To the third cross-interrogatory, witness answers:

Did not examine or traverse the whole extent of new river, he was part of a day engaged in the examination.

To the fourth cross-interrogatory, witness answers: He did not.

To the fifth cross interrogatory, witness answers:

He did not examine the whole. He examined a considerable part, say from three to five miles on the south side.

To the sixth cross-interrogatory, witness answers: It does not.

To the seventh cross-interrogatory, witness answers:

As before, he knows nothing of Harris' location; but New river empties into the Santafé. Witness was never exactly at the junction, but was between and where he could see both streams and knows that they form a junction. Dexter was not at the junction while witness was with him.

To the eighth cross-interrogatory, witness answers:

This is answered in the answer to the second direct interrogatory.

To the ninth cross-interrogatory, witness answers:

New river and Alligator creek form a junction about fifteen or twenty miles before they empty into the Santaffé. Cannot say the distance with any precision.

To the tenth cross-interrogatory, witness answers:

There is some good land and hammocks on New river. The hammocks are small as far as came under the observation of witness. Good pine land lies between the hammocks. Cannot state the size of the hammocks or their distance apart, nor the quantity of good land—never was in the river swamps so as to judge of their extent.

To the eleventh cross-interrogatory, witness answers:

He never knew New river called Alligator creek, except by Horatio S. Dexter. We know no other name for it but New river. It was not until lately that it was known in this part of the country that New river and Alligator formed an union or had any connection with each other.

To the 12th cross-interrogatory, witness answers:

This is answered above.

To the thirteenth cross-interrogatory, witness answers:

He knows nothing of what is enquired of in this interrogatory.

To the fourteenth interrogatory witness answers:

He knows nothing about it.

WILLIAM SPARKMAN.

Sworn to and subscribed before me, the 16th day of April, 1830.

WATERS SMITH, *Comimsioner.*

The opinion of the Hon. Joseph L. Smith, Judge of the Superior Court for East Florida, and filed in this cause, on the 10th day of September, A. D. 1830.

MOSES E. LEVY
vs.
ENTRALGO and ARREDONDO. } In Chancery.

In this case, Levy, the complainant, seeks relief against a contract entered into on the 3rd of August, 1820, with F. M. Arredondo, for the purchase of 38,400 acres of land in East Florida. For this purchase, the price stipulated was $25,000—$14,125 paid in hand, and the remaining $10,875 to be paid, one moiety at the end of one, and the other moiety at the end of two years, from the transfer of East Florida, secured by note, bearing date the 3rd August, 1820, payable to Arredondo, or order.

I have considered the payments as first coming to the satisfaction of the debt, created by the St. John's tract, as it will come to about the same result as would be produced by calculating the *offsets*.

The complainant seeks relief against the contract because of alleged misrepresentation.

1st. By setting it aside altogether, with decree of repayment—or, if not set aside *in toto*, that damages may be awarded proportioned to the injury sustained.

2nd. By a perpetual injunction decreed against the further prosecution of a suit at law upon the aforesaid promissory note, for the balance alleged to be unpaid, now pending at common law in this court, in the name of Juan de Entralgo, endorsee of said note.

In the first place, it should be remarked, that as to one half of this tract of 38,400 acres, no controversy is now existing, it having been compromised in July, 1824, by an exchange for a corresponding quantity of lands in the Alachua grant, by deed, bearing date the 13th of that month. The matter in litigation, therefore, relates exclusively to the remainder of the tract, and to the payments corresponding thereto.

These exhibits, testimony, and proofs, establish the following statement and facts to the entire satisfaction of the court, viz: that in 1820, at Havana, the parties negotiated the contract; that Mr. Arredondo exhibited to Mr. Levy a description of the tract of land, which he offered for sale; and, finally, sold on the aforesaid 3rd of August, a plat, purporting to be a survey of the land, representing its character as to quality, exhibiting and fixing all the circumstances of its location upon marked water courses, and, by references, giving its proximity and bearings in relation to the well known old Indian settlement, called Alligator town, and to the equally well known Suawanee river.

This *plat*, by lines, marks, and figures, represents the tract, in form a parallelogram, twelve miles long, and five wide; in length extending itself nearly east and west, and lying in equal parts on the north and south sides of a large creek, called Alligator, running lengthwise through the whole body of the land, and leaving no part of it more than about two and a half miles from its banks.

This *plat* also distinctly and unequivocally represents this body of land, as composed of somewhat more than one half hammock, disposed in the very best way to give value to the whole tract, being spread in equal and continuous ranges along the whole extent; and on each bank of the creek, the pine lands, being conveniently placed in two parallel borders, entirely in the back ground.

Attached to this *plat*, the following further written description is given:

"Thirty-eight thousand and four hundred acres of land, situated on the two banks of a creek, called Alligator creek, beginning at about seven miles west of an Indian settlement, called Alligator town, leaving that interval of seven miles between the said town and the present tract of land, for the lands of Don José Maza Arredondo. Therefore these 38,400 acres must begin as expressed above, at about seven miles west of Alligator town, and run in the direction marked in the *plat*, (west 20 deg. south,) twelve miles in length, and five in breadth.

"This creek enters into the river Suawanee, begins at Alligator town, which town is in a northwestwardly direction about forty miles distant from Pens (Paynes) town, and about eighty miles distant from Buena Vista. All these places are known under the general denominatton of Alachua."

The complainant, at the time of this purchase, had never been in Florida, and must have depended, (and no other means of information have been alleged in defence,) upon the above description and representation, for the character, quality, localities, and other circumstances calculated to determine the value of his purchase.

In truth, he was authorized to understand and believe from this representation, thus particular, and apparently authentic, placed before him by Mr. Arredondo, that he had obtained by his negotiation, a body of land, chiefly hammock, most eligibly situated in equal parts on the two banks of a respectable water course, uniting itself almost immediately at the western extremity of the tract with the river Suawanee, known to be in that direction, not much more than twenty miles distant from Alligator creek.

It is found, however, after sufficient inquiry and investigation, that this representation, inducing the purchase, and warranting the above expectation and belief, is altogether incorrect and unfounded, being *an entire mistake*. It is true, Alligator town and Suawanee river, well known to the geography of the country, are there; but the extensive hammocks, and the valuable water course uniting with the Suawanee, have not the slightest existence; and the purchaser, instead thereof, finds himself, in reality, possessed of only high, dry, sandy, valueless pine barren.

The question, then, upon this state of the case, presents itself, whether the complainant is entitled to a recission of the contract, or to any other relief upon it.

On the part of the defence, it is objected: *First*, that Levy made the purchase with his eyes open, and with the same knowledge of the quality and location of the tract, as was possessed by the vendor; and that, therefore, the maxim *caveat emptor* applies, and protects Arredon-

do: and, *secondly*, that Arredondo supposed, and really believed at the time of the sale, that the *plat*, and written description attached to it, were true and correct. In fact, that all that was promised by them did exist truly as represented; and that, therefore, neither morally nor legally, can fraud be alleged against the vendor, or made a ground for impeaching the contract.

As to the *first point*:—The rule that the *purchaser* must *take heed*, that he *buys* on his *own hazard*, does not apply where the vendor takes upon himself to give a representation of the character and qualities of the thing sold; and the purchaser, not having it immediately in his power, by the exercise of his own senses, or of common intelligence to test the representation, makes the purchase, confiding in that representation, in such cases, the rule must be *caveat venditor*.

It has already been shown in the present case, that when Levy made this purchase of Alligator tract, he had never been in Florida, but that he confided in, and purchased upon the representations made by the vendor,—representations, the correctness of which, he had at the time no opportunity of testing.

To him, then, as to this purchase, the maxim *caveat emptor* cannot apply.

As to the *second objection*, it is admitted and believed by the court, that Arredondo, in negotiating the same to Levy, was guilty of no *intentional* fraud. He had not, for years previous to the sale, or to the simulated survey by Burgevin, of which the *plat* exhibited to Levy was a substantial copy, been in Florida. To him the document must have been furnished, by agency, from Florida; and there is no evidence before the court to prove that he knew its real character, or that he did not suppose the land sold, was of the kind and quality represented by it.

In the decision which I make on this point, I take it for granted, that Arredondo intended no wrong—that he acted in good faith, believing his representations, made by means of the plat and written description attached to it, were just and true; but he was mistaken, and they were *in fact* false.

In a moral view, on the principle of right and wrong, as between the parties, it would seem in a case like the present, that a disinterested and dispassionate mind could never hesitate. Levy, confiding in the representations placed before him by Arredondo, as to the quality and value of a tract of land which he had no opportunity of seeing, becomes its purchaser, paying for it $25,000. Afterwards, on examination, it is found to be worth nothing, and that the representations on which he rested, are absolutely false.

When the mistake is discovered—when Arredondo finds that the money has been paid to him for nothing, by reason of his own erroneous representations, who can say, not blinded by interest, that he ought not, as a matter of justice, to refund? And why should Levy not be entitled to recover back the money, when he has received no value for it?

I deem the law, and the decisions of the courts, to be as clear and as certain as the equity and justice of the case.

Wherever a contract is founded on error and mistake, and where, but for the intervention of that error and mistake, the contract would not have been entered into, the parties are not bound thereby; but a court of equity will, if necessary, set it entirely aside.

So, too, wherever a contract has been obtained by false representations, the party induced to enter into it by those representations, will not be bound; and when, but for them, he would not have entered into it at all, courts of equity will entirely rescind it.

But where, notwithstanding the false representations, the party might still have entered into the contract, but on different terms, courts, if justice in that way can be done, will award a compensation in damages, without rescinding the contract *in toto*. *And the rule in all these cases is the same, whether the party making the false representation believe it to be true, or know it to be false.*

To show that these propositions are fully sustained, I think proper to cite a number of decided cases:

The court says, in the case of Bellworth vs. Hassell, 4 Camp., 141-2, "that any fraud, or *material misdescription*, though *unintentional*, would vacate the agreement;" but the misdescription proved in Hassell's case, was not material; and, therefore, a mere question of damages.

According to Starkie, "if the *vendor* of property give a false description of it, the vendee may rescind the contract; as if an estate is stated to be but *one mile* from a borough town, and it turns out to be *three* or four.—3 Starkie on ev., 1627—1 Camp, 337—14 Ves. Jun., 144.

In the case of Calverly and Williams, the lord chancellor said, "that any person, however unconversant in the actual situation of his estate, that will give a description, must be bound by it, *whether conversant of it or not.*"—1 Vesey, 213.

In the case of Ainsley vs. Medlycolt, the master of the rolls declared the law to be, that a party, by *a representation*, binds himself just as much as by *an express covenant*. If, *without* knowing that it is *not* true, he takes upon himself to make a representation to another, upon the faith of which that other acts, *no doubt he is bound, though his mistake was perfectly innocent.*—9 Vesy, 21.

Maddock also states the law to be, "that if a man, upon a treaty for a contract, makes a false representation, whether knowingly or not, by means whereof he puts the party bargaining, under a mistake upon the terms of the bargain, it is relievable against in equity."—1 Maddocks ch., 209.

In the case of *Gray vs. the Entrs. of Handkinson*, the court said, that by the rules of the civil, incorporated into the com. law, that whenever a thing purchased differed so much from the thing represented, as to render it unfit for the use which the purchaser intended, and which the vendor represented it was suited for, then the contract ought to be *rescinded*; but where the difference or defect is not so great as to call for a rescission *in toto*, then the price should be proportionably abated. The court said, in substance, in this case, that the rule would be the same, whether the imposition arose "*from intent*

and design, or from circumstances which *neither party knew of at the time.*"—1 Bays Rep. 278.

Again, in a similar case, the court said, that a misrepresentation as to the land sold, vitiated the contract *in toto;* or according to the circumstances entitled the parties to an abatement of price, corresponding with the intent of the misrepresentation; and that it made no difference, whether the vendor was aware that his representations were untrue or not; in either case, he was bound by them.—2 Bays Rep., 11, &c.

The court of chancery, of South Carolina, in the case of Glover vs. Smith, also state the law to be, "that *mistake*, *misconception*, or *misrepresentation*, are all grounds of relief, and for this court to interfere *and set aside contracts*, where the justice of the case may require that." The court adds that, "it makes no *difference*, that there was no *intentional* misrepresentations on the part of the commissioners," (the vendors;) "they were in error as to the quantity of the tract, and their representations led the purchaser into a mistake, from which he should be released."—4 Eg. Rep., by Des., 436.

In the case of *McFerran vs. Taylor and Massie*, the Supreme Court of the United States decided, that a misrepresentation as to a fork of a river, on which the land sold was situated, it being of more value where it was said to be, than on that where it was found, should be relieved against, though the mistake was not founded in fraud, the vendor at the time supposing the land lay where stated, and the circumstances being such that neither *vendor* nor *purchaser*, at the sale, *could know* that the lands were more valuable in the one place than in the other. But the court said, "*that he who sells property on a description given by himself, is bound to make good that description, if it be untrue* in a *material point*, although the variance *be occasioned by mistake.*—3 Cranch, 281-2.

The authorities above cited are too distinct and conclusive to leave doubt as to the law. In regard to the purchase, in addition to what has been observed, it is proper to remark, that, according to the testimony of several witnesses, there being no contradiction, land, of the character represented in the plat, and lying as described, between Alligator town and Suawanee river, would be, at present, of great value. While such land as is in fact found there, high sandy pine barren, is literally worth nothing, or next to nothing. All, well acquainted there, know that such is the true estimate.

To the suggestions in the defence, which would remove the purchase to remote streams, answering in *no respect* to the description given, I cannot think consideration is due. In my opinion, the proofs exhibited, clearly bring the purchase within the rule. The representations *have failed* in such *material* points, going to the *whole value* of the *purchase*, that had the truth been known at the time, it cannot be supposed, that the contract would have been entered into at all. It, therefore, becomes the duty of the court to decree, that it be *rescinded altogether*, and the *money advanced repaid.*

Upon the *second question*, whether the suit at law may be enjoined, greater difficulty is presented. *Entralgo*, in whose name the note

has been sued, as endorsee thereof, is a party defendant in the bill—which charges, that he was interested with Arredondo, in obtaining the Alligator tract, (the land in question,) from the Spanish Government; that he was cognizant of the true character of the *plat* and description exhibited; that he was interested in the tract itself, participated in the payments made for it by Levy, and was, by him, advised and cautioned before the indorsement and transfer, against receiving the said note, and that he, Levy, objected to making any further payments upon it.

Upon this bill, a decree, that it be taken *pro confesso*, has been regularly entered against him.

The difficulty, upon the question, arises not only from the doubt thrown over the above obligation by the answer of Arredondo, which, so far as it goes, is taken in favor of Entralgo, but from the circumstance that, according to both bill and answer, it appears that the note in question incorporated, originally, a debt due, not merely for the controverted moiety, but for the whole of the Alligator tract, and for the tract on the St. John's also. So, that an injunction against the whole note would enjoin not only a *bad* but a *good* debt.

I briefly state these difficulties as they have occurred to me in examining the subject, that the party, against whom my decision must be made, may perceive the precise grounds on which it rests, and have opportunity hereafter, to revise in a higher court. Still, though I have found cause for hesitation, the conclusion is forced upon me, that equity requires that the note, and the *whole* note, should be enjoined.

The bill, as to all matters directly alleged against Entralgo, and which, by the showing in the bill, are *within his own knowledge*, must, by reason of his silence, his continued neglect to answer, and the order that the bill be taken *as confessed*, be deemed to be *true*, except so far as it is *effectually* contradicted by the answer of Arredondo.

But Arredondo, while he answers literally, that Entralgo had no interest in this land, so qualifies his denial, by the exceptions admitted, as substantially to do away its effect. In saying that Entralgo had no interest in the land, *except* as to what he was to receive in consideration of having aided to obtain the grant, is, virtually, to admit, not only, that he had an existing interest at the time of the sale, but, as alleged, that he was interested with Arredondo in obtaining the grant from the Spanish Government.—Vide, answer, page 789.

It is also, in the answer, expressly admitted by Arredondo, that Entralgo did participate in the payment made by Levy for the purchase of this tract. How, it may be asked, could Entralgo have participated in the purchase money, if he had not been interested in the property sold? And what difference in law or equity can it make, that that interest was founded on services rendered in obtaining the grant?—Vide, answer, page 9.

Being interested in the property sold, and participating in the price paid, though, in what proportion is not shown, Arredondo alleging that it was not *joint and equal*, warrants the court in considering the

note as liable to be enjoined, now, while in the hands of Entralgo, and in suit by him, as it would be if it remained in possession of Arredondo. This conclusion is further fortified, because there is no denial whatever of the alleged *previous* notice and caution to Entralgo, not to take the note, and that Levy would make no further payments upon it, or if the allegation that he, Entralgo, was cognisant at the time of the sale, of the real character of the *plat*.—Vide bill, page 34 and 40.

The *whole note*, not a part is enjoined, because it is deemed most equitable, and in accordance with the principle on which set-offs are made, to apply the payments on this void purchase of the one moiety of the Alligator tract to the entire extinguishment of the debt contracted for the other moiety, and for the St. John's tract; and to order the balance remaining after this application, to be refunded, and the whole of the unpaid part of the note to be enjoined.

This, on the principle, that the purchase to be rescinded, is the mode of adjustment, clearly the most advantageous both to Arredondo and to Levy, by it the least amount is to be refunded, and the whole transaction is closed. But, while I decree to the extent of enjoining the note against Entralgo, I am not willing, the proofs being defective as to the proportion and amount of his interest in the property sold, to hold him further liable to a contribution as to the sum to be refunded.

Note for Clerk.—The clerk will enter up the decree *in form*. The purchase as to one moiety of the Alligator tract, to be rescinded. The note to be enjoined: and a re-payment by Arredondo to be made of the sums received on account of this moiety with five per cent. interest from time of payment.

[DECREE.]

And, afterwards, before the Superior Court for the Eastern District of Florida, sitting as a court of chancery, to wit, on the tenth day of September, in the year of our Lord one thousand eight hundred and thirty, the following decree was entered of record in this case, to wit:

MOSES E. LEAY, *Complainant*,
vs.
FERNANDO DE LA MAZA
ARREDONDO & JUAN DE ENTRALGO, *Defendants*. } In Chancery.

Whereas the complainant did, on the eleventh day of November, one thousand eight hundred and twenty-six, exhibit his bill in this court against the defendants, and duly obtained an order of publication in the terms of the statute in such case made and provided, requiring the said defendants to appear and answer the said bill, otherwise the same would be taken *pro confesso* against them, it having been made to appear that the said defendants at the time of exhibiting the said bill, both resided out of the jurisdiction of this court;

and whereas the said complainant did cause due publication to be made, in conformity with the said order of the court; and whereas such proceedings were afterwards had in this cause, as that it was ordered and decreed by the court that the said complainant should amend his said bill, and the said bill was thereupon accordingly amended, and it was further ordered and decreed by the said court, that the said defendants should answer the said amended bill within twenty days; and whereas the defendants, F. M. Arredondo and Juan de Entralgo, did, within the said twenty days, file their demurrer to the said bill, which by the order and decree of this court, was disallowed and overruled, and the said defendant, Fernando de la Maza Arredondo, was ordered to answer said bill, and accordingly filed his answer thereto; and whereas the said Juan de Entralgo, wholly failed to answer said bill, whereupon, it was ordered by court that the said bill should be taken *pro confesso*, as against the said Juan de Entralgo; and the said cause coming on to be heard on the amended bill of the complainant, the answer of the defendant, Fernando de la Maza Arredondo, and the replication of the said complainant, together with the exhibits and evidence on both sides, and the arguments of counsel having been heard and duly considered, it is ordered, adjudged and decreed, and his honor, the judge of this court, doth *order*, *adjudge* and *decree*, that the contract of purchase in the said bill of complaint mentioned, as to one moiety of the Alligator creek tract of land be wholly rescinded and set aside; that the note in the said bill and answer mentioned as having been made and given by the complainant to the defendant, Fernando de la Maza Arredondo, for the sum of ten thousand eight hundred and seventy-five dollars, be delivered into the registry of this court, and that the same be, by the clerk thereof, cancelled, and that the suit instituted at common law on the said note by the said Juan de Entralgo against the said Moses E. Levy, the complainant in this cause, be perpetually enjoined, and the said Juan de Entralgo perpetually restrained, and enjoined from any, and all further and other prosecution of the said suit at law, and from all other and further proceedings of any kind against the said Moses E. Levy, by reason of the making of the said note by the said Moses E. Levy. It is further ordered, adjudged and decreed, that the said Fernando de la Maza Arredondo, do pay to the said Moses E. Levy, the sum of seven thousand and forty-four dollars and twenty-five cents, being the amount of the several payments made by the said Moses E. Levy, to the said Fernando de la Maza Arredondo, on account of the moiety of the said Alligator creek tract of land, together with the sum of three thousand and ninety-two dollars and seventy-two cents, being the interest on the said sum of seven thousand and forty-four dollars and twenty-five cents from the time of the payment thereof, at the rate of five per centum per annum; and that the said Fernando de la Maza Arredondo and Juan de Entralgo, do pay to the said Moses E. Levy his costs in this suit by him expended, amounting to the further sum of twenty-two dollars and fifty-two and a half cents; and that the said Moses E. Levy, have execution of the said sums hereby decreed to

be paid by the said Fernando de la Maza Arredondo, and also of his costs aforesaid.

This decision is to be considered as a decision of the last July term of this court, pursuant to an order of record at said term, dated 26th July, 1830.

Note of record, at the foot of the foregoing decree.

This decree to be taken without prejudice to the right of said Levy as to any further claim or suit he may make or institute against the said Entralgo for the sum in this decree ordered to be refunded and repaid by the said Arredondo, the same not being collected from, or repaid by, the said Arredondo.

Note, of record, as aforesaid. Interest calculated on the sum ordered to be refunded, to the 10th of September, 1830, the day when the decree was filed in court.

And, afterwards, to wit, on the twenty-ninth day of October, in the year of our Lord one thousand eight hundred and thirty, the said defendants, by their solicitor, filed their appeal from the decree of this court, to the court of appeals of this territory; which said appeal is in the words and figures following, to wit:

Superior Court for the Eastern Distribt of Florida.

In Chancery. Between { FERNANDO M. ARREDONDO, AND JUAN DE ENTRALGO, *Defendants*, and MOSES E. LEVY, *Complainant*.

The defendant, Fernando M. Arredondo, hereby states to this honorable court, that he appeals, and hereby appeals to the court of appeals of this territory, to be held on the first day of January next ensuing the date hereof, from all that part of the decree made in this cause, touching and concerning this defendant. And the defendant, Juan de Entralgo, hereby appeals to the said court of appeals, from all that part of the decree made in the said cause, touching and concerning him, the said defendant, Juan de Entralgo. And the said defendants pray, that the said decree may be sent to the said court of appeals.

Dated 18th October, 1830.

JOHN RODMAN, *Solicitor of F. M. Arredondo and Juan de Entralgo, defendants.*

Copy of the appeal bond of F. M. Arredondo, taken in this cause, to wit:

Know all men by these presents, that we, Fernando M. Arredondo, and William H. Simmons, are held and firmly bound unto Moses E. Levy, in the just and full sum of three thousand dollars, money of the United States, for which payment, well and truly to be made, we bind ourselves, our executors, administrators and assigns, by these presents, sealed with our seals, and dated this twentieth day of Sep-

tember, A. D.. 1830, and of the independence of the United States of America, the fifty-fifth.

Whereas, Fernando M. Arredondo, at the suit of Moses E. Levy, hath prayed an appeal from the decree of the Superior Court for East Florida, to the Court of Appeals of this territory—

Now, the condition of this obligation is such, that if the said Fernando M. Arredondo shall duly prosecute his appeal against the said Moses E. Levy, and in case of the affirmance of the said decree, to pay to the said Moses E. Levy all costs and damages that may accrue by reason of said appeal, damages not to exceed twenty per cent. at the discretion of the Court of Appeals, then this obligation to be void, otherwise to be and remain in full force and virtue.

Signed and sealed in the presence of

FERN'DO DE LA MAZA ARREDONDO, [SEAL.]
WILLIAM H. SIMMONS, [SEAL.]

The within bond is approved by me, 20th Sept. 1830.

JOSEPH L. SMITH.

CLERK'S OFFICE, *Sup. Court.*

The within bond and security approved by me. St. Augustine, 20th Sept. 1830.

GEO. GIBBS, *Clerk.*

Copy of the appeal bond of Juan de Entralgo, taken in this cause, to wit:

Know all men by these presenst, that we, Juan de Entralgo and William Travers, are held and firmly bound unto Moses E. Levy, in the just and full sum of two hundred dollars, money of the United States, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, by these presents, sealed with our seals, and dated this twentieth day of September, A. D. 1830, and of the independence of the United States of America the fifty-fifth.

Whereas, Juan de Entralgo, at the suit of Moses E. Levy, hath prayed an appeal from the decree of the Superior Court for East Florida, to the Court of Appeals of this territory—

Now, the condition of this obligation is such, that if the said Juan de Entralgo shall duly prosecute his said appeal against the said Moses E. Levy, and in case of the affirmance of the said decree, to pay to the said Moses E. Levy all costs that may accrue, by reason of said appeal, then this obligation to be void, otherwise to be and remain in full force and effect.

Signed and sealed in the presence of

JUAN DE ENTRALGO, [SEAL.]
By WILLIAM TRAVERS, *his Atty. and agent in fact.*
WILLIAM TRAVELS, [SEAL.]

This bond, executed in my presence and by me appproved. St. Augustine, 20th Sept. 1830.

JOSEPH L. SMITH.

CLERK'S OFFICE, *Sup. Court.*

The within bond and surety approved by me. St. Augustine, 20th Sept. 1830.

GEO. GIBBS, *Clerk.*

SUPERIOR COURT, *District of East Florida, to wit:*

I, George Gibbs, clerk of the said Court, for the district aforesaid, do hereby certify, that the foregoing one hundred and eighty-six pages, contains a full, true and complete transcript of the record and proceedings had in the case therein named.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, this third day of December, A .D. 1830, and of the Independence of the United States of America the fifty-fifth.

GEORGE GIBBS, *Clerk.*
J. R. B. GIBBS, *Dep. Clerk.*

In the Court of Appeals of the territory of Florida.

Be it remembered that on the third day of January, in the year of our Lord one thousand eight hundred and thirty-one, F. M. Arredondo and Juan de Entralgo, by their solicitor, John Rodman, filed in the clerk's office of this court, the foregoing transcript of the record in said case.

And, afterwards, to wit, on the fourth day of January, in the year aforesaid, came Moses E. Levy, by his solicitor, Thomas Douglas, and filed, in open court, his exceptions to the decree given in this case, in the court below, which are in the words and figures following, to wit:

Territory of Florida, Court of Appeals, January term, 1831.

MOSES E. LEVY
vs.
F. M. ARREDONDO and
JUAN BLAS DE ENTRALGO.

Appeal from a decree of the Superior Court for the district of East Florida.

And the said Moses E. Levy, by Thomas Douglas, his solicitor, comes and alleges to the court now here, that there is manifest error in the record and proceedings in this case in that part of the decree of the aforesaid Superior Court, which requires the said Fernando de la Maza Arredondo to pay to the said Moses E. Levy the sum of seven thousand and forty-four dollars and twenty-five cents, in this, to wit:

That that part of the said decree should have been joint against the said Fernando de la Maza Arredondo and the said Juan Blass de Entralgo, and not several against the said Fernando de la Maza Arredondo.

And also, in that the said decree should have required the payment of a larger sum of money by the said Arredondo and Entralgo to the said Moses E. Levy. Therefore, the said Moses E. Levy excepts

to that part of the said decree, and prays that he may have the benefit of his said exception upon the hearing of this cause in this honorable court.

THOMAS DOUGLAS,
Solicitor for Moses E. Levy.

And, afterwards, on the 12th day of January, in the year last aforesaid, the appellants, F. M. Arredondo and Juan de Entralgo, by their solicitor, John Rodman, alleged a diminution of the record, as follows:

Court of Appeals.

FERNANDO M. ARREDONDO, and JUAN DE ENTRALGO, *Appellants*, vs. MOSES E. LEVY, *Appellee*. } In Chancery.

And hereupon the said appellants, by John Rodman, their solicitor, come into court and allege diminution in the record of the proceedings in this cause in the court below, and filed in this court, to wit: For that in the said court below, there is a certain document in the Spanish language, being a certified copy of a survey and plat of the tract of land on Alligator creek, taken from the office ef the public archives in the city of St. Augustine, where the original survey and plat of said tract of land remain on file, and which document in the Spanish language was produced in evidence on the hearing of this cause in the court below.

JOHN RODMAN,
Solicitor for appellants.

The foregoing suggestion of diminution was indorsed by the clerk as follows: "Fact admitted, and motion waived. 12th January, 1831."

And, on the same day and year, John Rodman filed in this cause an affidavit, which affidavit is in the words and figures following, to wit:

Court of Appeals.

FERNANDO M. ARREDONDO, AND JUAN DE ENALGO, *Appellants*, *vs.* MOSES E. LEVY, *Appellee*. } In Chancery.

COUNTY OF LEON, *ss.*

John Rodman, solicitor for the appellants in the above entitled cause, being duly sworn, doth depose and say, that on the hearing of the said cause in the Superior Court for the Eastern District, in St. John's county, a certain document in the Spanish language, purporting to be the survey and plat of the Alligator creek tract of land, mentioned in the pleadings in this cause, together with a translation into

English of said survey and plat, were produced in evidence, and were filed in court, as this deponent understood and believes; that the said document in the Spanish language, as far as this deponent recollects, was a certified copy from the original Spanish survey and plat remaining in the office of pubic archives, in the city of St. Augustine; and this deponent further saith, that on the hearing of the said cause in the court below, he, this deponent, pointed out and commented upon a material error made in the translation of the said document from Spanish into English; but that the public interpreter and translator, not being then in court, the said error was not corrected, but inadvertently afterwards left subsisting in the English translation of the said document; that the said error consisted in this: that the word *montes* in Spanish, where it occurs twice on the original Spanish plat, was rendered in the English translation by the word *hammock;* and this deponent has understood from persons well versed in the Spanish language, that the word *montes*, without doing great violence to language, cannot be translated into English by the word *hammock;* that said word *montes*, does not mean exclusively *hammock*, any more than it means *pine hills*.

And this deponent further saith, that he was not aware of the aforesaid deficit in the record of this cause, until he examined the same in this court a few days ago, having had no opportunity of examining it after it was made up in the clerk's office of the court below; and the 14th rule of this Court, with regard to the inspection of original papers, was wholly uknown to this deponent, until he arrived in this city to attend this court.

JOHN RODMAN.

Sworn to this 12th day of January, 1831, in open Court.

JAS. S. LINN, *Clerk.*

And, afterwards, to wit, on the 13th day of January, in the year aforesaid, John Rodman, solicitor for the appellants, suggested a further diminution of the record aforesaid, as follows, viz.

Court of Appeals.

FERNANDO M. ARREDONDO, and JUAN DE ENTRALGO, *Appellants*, vs. MOSES E. LEVY, *Appellee.* } In Chancery.

And hereupon the said appellants, by John Rodman, their solicitor, come into court and allege diminution of the record in this cause, in this, that the said record does not contain the testimony of Horatio S. Dexter, in a deposition made by him in this cause before Elias B. Gould, esq. justice of the peace, on interrogatories and cross interrogatories at considerable length, and which deposition was read in evidence on the part of the defendants below on the hearing of this cause, and duly filed in the court below, and still remains there.

J. RODMAN,

Solicitor for the appellants.

COUNTY OF LEON, *city of Tallahassee, ss.*

John Rodman maketh oath and saith, that the facts stated above are correct and true, and that this deponent verily believes that the said deposition of the said Horatio S. Dexter, now remains in the clerk's office of the Superior Court, at St Augustine; that this deponent, the sole solicitor and counsellor for the defendants in the court below had no opportunity of examining the record in this cause until it arrived, sealed up, in this city, and directed to the clerk of this court.

JOHN RODMAN.

Sworn to this 12th day of January, 1831.

JAS. S. LINN, *Clerk.*

And, afterwards, to wit, on the fourteenth day of January, A. D. 1831, the following order was entered upon the record of said court, viz:

FERNANDO M. ARREDONDO, &c. *Appellants,*
against
MOSES E. LEVY, *Appellee.*

Upon an appeal from a decree of the Superior Court, Eastern District, St. Johns county.

"The motion made on yesterday by the appellants for a certiorari on suggestion of diminution of the record, being maturely considered by the court, it is ordered that the said certiorari be awarded, to be directed to the clerk of the court below, to certify the record more fully, returnable here on the first day of the next term. And it is further ordered that the cause be continued until the next term."

And, afterwards, to wit, on the 11th day of February, in the year last aforesaid, the clerk of this court, in obedience to the above order, directed the following writ to the clerk of the court below, viz:

The Territory of Florida, to the clerk of the Superior Court for the Eastern District, St. Johns county, greeting:

Whereas, in the record and proceedings in a certain suit in chancery, between Moses E. Levy, complainant, and Fernando M. Arredondo and Juan de Entralgo, defendants, lately sent to the judges of our court of appeals by reason of the appeal of the said Fernando M. Arredondo to the decree pronounced therein, diminution is suggested in this, that the said record does not contain the testimony of Horatio S. Dexter, in a deposition made by him in this cause before Elias B. Gould, esq., a justice of the peace, on interrogatories and cross-interrogatories.

Therefore, you are hereby commanded that, under your hand and seal of office, the record and proceedings aforesaid, you more fully, to the judges of our said Court of Appeals, at the city of Tallahassee, on or before the first day of the next term, do send and certify enclosed, returning also this writ.

Witness, Joseph L. Smith, presiding judge of our said Court, this

11th day of February, A. D. 1831, in the 55th year of American Independence.

JAS. S. LINN, *Clerk.*

And, afterwards, on the 8th day of December in the year aforesaid, he clerk of the Superior Court for the county of St. Johns, returned the foregoing writ, having indorsed upon it the following return, viz.

SUPERIOR COURT, EAST FLORIDA,
Clerk's Office, St. Agustine.

In obedience to this writ, I herewith send to the Court of Appeals, the copies of the documents required by the same; stating at the same time, *that they are no part of the record* in the case of Moses E. Levy, againt Fernando M. Arredondo and Juan de Entralgo, they not having been exhibited or read in evidence on the hearing of said cause in this court.

GEORGE GIBBS, *Clerk.*
T. K. B. GIBBS, *Dep. Clerk.*

December 8th, 1831.

Superior Court for the Eastern District of Florida.

FERNANDO M. ARREDONDO, AND JUAN DE ENTRALGO, *ads.* MOSES E. LEVY.	In Chancery.

Interrogatories to be administered to Horatio S. Dexter, a witness to be produced, sworn, and examined before Elias B. Gould, esquire, a justice of the peace, in and for the county of St. Johns, on the part of the defendants.

1st. Interrogatory.—Did you visit in the month of March last past, that part of the eastern district of this territory, which lies about a creek called Alligator creek, and the river Santafé; and did you examine the land situated on said creek, or either or both of the branches or prongs of it?

2nd. Did you examine particularly a tract of land of thirty-eight thousand acres, granted by the Spanish Government of East Florida, in the year 1817, to Fernando de la Maza Arredondo, one of the defendants in this suit, and which tract of land is situated on the said Alligator creek, or on one of its branches or prongs?

3d. Please to look at the sketch or plat hereto annexed, representing the said Alligator creek, with its branches or prongs, and a part of the river Santafé, and the location of the said tract of land, and declare whether, or not, this sketch or plat was made by you, soon after your return to the city of St. Agustine from visiting the said tract of land, and from notes or sketches taken by you when you were on said tract of land; and whether the same be a true and correct representation of the said Alligator creek, with its branches or prongs, and of the location of said tract of land.

4. Did any person or persons accompany you, when you visited and examined the situation of said tract of land, and the said Alligator creek and its branches or prongs, and the part of the river Santafé, represented on the sketch hereto aunexed? If so, state what person or persons, there names, and where they reside.

5th. Did you understand or learn from those persons, or from others, who reside near the said tract of land, and the said Alligator creek, or either of its branches or prongs, or near the river Santafé, whether either of the branches or prongs of the said Alligator creek, now bears, or is generally known or called by a different name from that which it formerly bore, or was known or called by, while Florida was under the Spanish Government? If so, state the name said branch or prong of the said Alligator creek now bears or is known or called by, and when said name was given to that part of the said Alligator creek; and whether the same be situated north or south of that branch or prong, which still bears the name of Alligator creek, and where said creek, or either of its branches or prongs, empties or discharges its waters.

6th. On what prong or branch of the said Alligator creek, is the said tract of land situated, and what is the length and mean width of the branch or prong of said creek, where said land is situated

7th. Do you know of your own knowledge, or from the information of intelligent persons living near the said tract of land, or on it, whether or not it be the same location as the survey made by the American General, Harris, in the year 1812 or 1813? If so, state how, when, and from whom, you obtained your information on this subject.

8th. What is the distance of the said tract of land from the river Santafé, and from the river Suawanee, and what is its distance from that part of Alachua, where Mr. Wanton resides, and from Picolata and other places of note? How far is it from the public road leading to Tallahasse, commonly called Bellamy's road?

9th. What is the general quality and description of said tract of land? What kind of timber is growing upon it? What portion of said tract is what is called hammock land?

10th. Are there any settlers or inhabitants on said tract of land? If so, state how many families, and what kind of cultivation is carried on, and whether said families gain a comfortable living on said land?

11th. Did you visit said tract of land a second time since your first visit? If so, state when, and if any person was with you, who, and what particularly you observed on this second visit.

12th. If there be any other matter or thing in regard to said tract of land, its location, quality, or otherwise, within your knowledge, state the same as particularly as though you were specifically thereunto interrogated.

JOHN RODMAN,
Solicitor for the Defendant.

Cross-Interrogatories for Horatio S. Dexter.

1. If you answer the second direct interrogatory affirmatively, be pleased to state distinctly how you know that any of the land examined by you, at the time in the said interrogatory mentioned, is land which was granted by the Spanish Government of East Florida, to Fernando de la Maza Arredondo, one of the defendants, in the year 1817.

2. In traversing the lands on the said Alligator creek, or its prongs, did you discover any evidence, whatever, of any of the said land having been located or surveyed at a previous time? Did you discover any lines or marked trees, such as designated a previous survey and lines and boundaries? If you did, be pleased to describe the place or places where you found any such lines or marked trees, the courses and distances of such lines and trees. And especially declare what person or persons were with you when you discovered them, or whether you pointed them out to any, and which of the persons who accompanied you in the examination of these lands.

3. What is the quality of the lands on the creek marked on the plat annexed as "Sampson" and "Alligator?"

4. Were you at the junction of the said Alligator and Sampson's creek, with the Santafé, on your examination of this part of the country in March last? What is the whole length of the said creek, called

Sampson and Alligator creek, from its junction with the Santafè to its head? Be pleased to explain the meaning of the figures marked on the said creek in the plat annexed.

5th. If you state that the northern branch or creek which, on the plat annexed, is represented as uniting with the Alligator or Sampson's creek, ever bore a different name from that which it now bears, and that you learned or understood this fact from any of the persons who reside in the neighbourhood of the said creeks, or from others, be pleased to state, distinctly, the names of the persons from whom you received this information, and when you received it.

6. If you undertake to make any statement in answer to the seventh direct interrogatory, founded on information of the persons referred to in the said interrogatory, be pleased to name, particularly, the person or persons from whom you received your information in regard to the matter inquired of by the said seventh direct interrogatory.

7. Do you pretend that the courses and distances of the different parts of the country, as delineated upon the plat or sketch made by you, and annexed to the direct interrogatories, are correct?

8th. Had you a compass or chain with you when you examined the parts of the country delineated on the said sketch or plat, or did you use either the one or the other in making said examination; and, particularly, did you use either in your examination or survey of the tract of land described in the interrogatories on the part of the defendant, as having been granted to the defendant, Arredondo? If you did, please to name the person or persons who assisted you in the use of them.

JNO. DRYSDALE,
Solicitor for Complainant.

In the Superior Court, District of E. Florida.

F. M. Arredondo,
And Juan de Entralgo, *ads.*
Moses E. Levy,
} *In Chancery.*

Witness for the Defendants.

The answer of Horatio S. Dexter, taken before Elias B. Gould, justice of the peace for the county of St. John, to the interrogatories hereunto annexed:

Horatio S. Dexter being duly sworn, to the first interrogatory, answers yes. He examined that part of the district on two occasions, the first examination was partial. He was directed to examine the extent of what is now called Alligator.

Second. Witness examined it generally.

Third. Witness answers yes. The plat exhibits the general features of the country. He made it from his own observations, excepting to the eastward of the road, which he derived from the information of others residing in the neighborhood.

Fourth. When witness first visited this tract of country he was put on the trail by William Sparksman, a planter near Santafé bridge.

On the second exploration, Samuel Y. Garey, of Black creek, the said William Sparksman, and his son James Sparksman, accompanied him. After arriving at this district of country, witness was accompanied by various persons now settled about Alligator. All the settlers within the tract that witness visited in the exploration, assisted and imparted all the information that was useful.

Fifth. Yes. Witness was acquainted with it a few months previous to the exchange of flags. It then bore the name of Allapate, an Indian name for Alligator. Since then, it has borne two names; first, Santa Fé, and recently, New river. The persons now residing on Alligator creek, have adopted the name of New river, and among the American community, it is now known by that name. This name was given about two years ago. It is situated north of that which now bears the name of Alligator creek. New river, formerly called Alligator, empties into the Santa Fè—the stream runs from the Santa Fé, nearly a straight course, when it forms an elbow, trenching westwardly, and heads about seven miles from the south prong of the river St. Mary's, and is also about the same distance from the head waters of Black creek. The tract of land in controversy, lies north of what is called Sampson and Alligator, about six or seven miles; at the disemboguement, the distance is not so great. There is a dividing ridge between the two streams at their disemboguement—the sketch, hereto annexed, being incorrect, in representing them as being united: this sketch having been made from information gained at the first examination of the country.

Sixth. The tract of land is situated north-west of what is now called Alligator: the length of New River, formerly called Alligator, is about twenty-eight miles to its head waters: the width varying from fifteen to one hundred and fifty feet, or thereabouts.

Seventh. Of his own knowledge, witness knows nothing. He has understood, that the tract of land described in the annexed plat, was the location of General Harris, at the time he invaded Florida with an armed force.

From conversations with individuals, associated with Harris, and from the circumstance of having once seen the contents of his pocket book, after he, (Harris,) was killed, witness has no doubt that the land, before spoken of, was his location: and that there are no creeks which empty into the Santa Fé, except those before described, that answers the survey of Burgevin.

Eighth. Witness does not know the distance of the tract from the Sante Fé. The distance from Alligator or New river, to Wanton's, is from thirty to thirty-five miles; and from Picolata, about thirty miles; from the ferry at Black creek, by the trail, twenty-seven miles; distance from the road leading to Tallahassa, about fourteen miles; to its eastern boundary seven miles west of the Tampa Bay road, and about eighty miles from the Suawanee.

Ninth. Witness says, that the quality of the land is generally better than any survey to the same extent, that he has seen. The hammock produces the usual growth of timber. The pine land is bedded on clay, and the pine growth is intermixed with red oak and hickory; and there are some tracts of cane of an unusual growth.

Tenth. There are eight families settled on different parts of the survey. They are employed in raising stock, and cultivating provisions, in which they have been very successful—procuring thirty bushels of corn per acre off their pine lands.

Eleventh. Witness visited the said tract a second time in the early part of April last. The remaining part of this interrogatory he has already answered in his answer to the preceding interrogatory.

Twelfth. Witness says, that from his own observations, and from the information of others, residing on the tract of land referred to, he is of the opinion that it is a better tract of country than the Alachua.

Answers to Cross-Interrogatories.

First. Witness says, that about the year 1815, an Indian brought to the Governor Kindelan, the scalp and pocket book of General Harris. Witness saw the pocket book examined, and saw in it a plat of the tract of land, described in Burgevin's survey, being a fac simile of General Harris', as far as deponent's memory serves him: that after the pocket book had been examined, it was handed over to F. M. Arredondo, junior, and Arredondo, senior, memorialized for the land. The pocket book also contained a paper, in which was related a particular description of the country. Witness says, that there is no other creek in the vicinity, that corresponds with Harris' survey, and this he ascertained with his compass.

Second. Witness saw a great number of trees blazed, whether by Indians or others, he does not know, but he presumes, they were not blazed by Harris; and witness's impression is, that it was not surveyed by either. He saw no blazing that corresponded with the plat of Harris or Burgevin. To the remaining part of this interrogatory, witness says, he has answered as fully as he can answer, in his answer to the fourth direct, and to the preceding cross-interrogatory.

Third. On what are now called Sampson and Alligator, the lands bordering on each side are of a very inferior quality, except some small parcels about Sampson.

Fourth. The figures in the plat annexed, indicate the number of miles. Alligator empties into Sampson, and Sampson into Santa Fé.

Fifth. Witness refers to his answer to the fifth direct interrogatory. He was informed that the name of Alligator creek was changed to New river, by those who reside on the tract, and who reside in the neighborhood of it, particularly William and James Sparksman.

Sixth. Witness cannot answer more fully than he has answered in his answer to the seventh direct and the first cross-interrogatory.

Seventh. The delineation was only intended to exhibit the features of the country, and was not made by any scale; and more particularly, to point out and describe the courses of the different streams. The distances were ascertained by time.

Eighth. Witness had no chain; but in both visits he was was furnished with a compass; and he had with him a copy of Burgevin's

survey, for the purpose of ascertaining its correctness; and the only thing that witness could find to guide, was the creek itself, and from collected information, of its being the place of Harris' location.

HORATIO S. DEXTER.

SUPERIOR COURT,
Eastern District of Florida, to wit:

I, George Gibbs, clerk of the said court for the district aforesaid, do hereby certify, that the foregoing are true copies of the interrogatories, and cross-interrogatories, to Horatio S. Dexter, and the answers of said Dexter to the same, taken before Elias B. Gould, esq., a justice of the peace for St. John's county, together with the plat which is thereto annexed. Which said interrogatories and cross-interrogatories, together with the answers to the same, and the said plat, are now on file in my office, in the case of Moses E. Levy against Fernando M. Arredondo and Juan de Entralgo, and were so on file at the hearing of said cause; but which said documents, as appears by the originals of the same in my charge, were not exhibited or read in evidence on the hearing of the said cause before this court.

In testimony whereof, I have hereto set my hand and
[SEAL.] affixed the seal of the said court, this eighth day of December, A. D. 1831.

GEORGE GIBBS, *Clerk*,
J. R. B. GIBBS, *Dep. Clerk.*

The foregoing record is indorsed by the clerk of the court, as follows: "filed 14th January, 1832."

The above deposition of Horatio S. Dexter, returned under certiorari, issued from the court of appeals, though copied in the record, was neither offered nor read in evidence on the trial of the case in the said court.

J. H. DUVAL, *Clerk.*

And, afterwards, to wit, on the 9th of January, 1832, the following entry in the case, was made upon the record of this court, to wit:

FERNANDO M. ARREDONDO, &c. *Appellants*,
against
MOSES E. LEVY, *Appellee.*
} Upon an appeal from the Eastern District, St. Johns county.

This day, the appellant, by counsel, moved the court for leave to file the answer of Juan Blas de Entralgo, which motion being argued, ordered that the same be overruled. And thereupon the cause was partly heard upon the transcript of the record of the appeal aforesaid, and arguments of counsel, and is continued until to-morrow for a further hearing thereof.

10*th January*, 1832.

FERNANDO M. ARREDONNO, &c., *Appellants*, } Upon an appeal from
against } the Eastern District,
MOSES E. LEVY, *Appellee*. } St. Johns county.

"This cause was this day still further heard upon the transcript of the record of the appeal aforesaid and arguments of counsel, and is continued until to-morrow for a further hearing thereof."

11*th January*, 1832.

FERNANDO M. ARREDONDO, &c., *Appellants*, } Upon an appeal from
against } the Eastern District,
MOSES E. LEVY, *Appellee*. } St. Johns county.

This cause was this day still further heard upon the transcript of the record of the appeal aforesaid and arguments of counsel, and is continued until to-morrow for a further hearing thereof.

12*th January*, 1832.

FERNANDO M. ARREDONDO, &c., *Appellants*, } Upon an appeal from
against } the Eastern District,
MOSES E. LEVY, *Appellee*. } St. Johns county.

This cause was this day fully heard upon the transcript of the record of the appeal aforesaid and arguments of counsel; but, because the court was not yet advised of its judgment, to be given in the premises, time is taken to consider thereof.

And, afterwards, to wit, on the 11th day of January, A. D. 1833, the following entry was made in this case, on the record of this court, viz.:

FERNANDO M. ARREDONDO, &c., *Appellants*, } Upon an appeal from
against } the Eaestern District,
MOSES E. LEVY, *Appellee*. } St. Johns county.

This day came the appellee, by his attorney, and thereupon this cause was again partly heard upon the transcript of the record of the appeal aforesaid, and is continued until to-morrow for a further hearing thereof.

12*th January*, 1833.

FERNANDO M. ARREDONDO, &c., *Appellants*, } Upon an appeal from
against } the Eastern District,
MOSES E. LEVY, *Appellee*. } St. Johns county.

"This day came the appellee, by his attorney, and thereupon this case was fully heard upon the transcript of the record of the appeal aforesaid, and arguments of counsel for said appellee; but, because the court is not yet advised of its judgment to be given in the premises, time is taken to consider thereof."

And, afterwards, to wit, on the 7th day of January, A. D. 1834, the following entry in said case was entered of record, viz:

FERNANDO M. ARREDONDO, &c., *Appellants*, *against* MOSES E. LEVY, *Appellee*. } Upon an appeal from the Eastern District, St. Johns county.

This day came the counsel for the appellee, and suggests to the court the death of the appellant, Fernando M. Arredondo.

And, afterwards, to wit, on the 28th day of January, A. D. 1834, the following order was entered of record in said case, to wit:

FERNANDO M. ARREDONDO, &c., *Appellants*, *against* MOSES E. LEVY, *Appellee*. } Upon an appeal from the Eastern District, St. Johns county.

This day came the appellee by counsel, and moved the court for an order to compel the appearance of the legal representatives of the realty, or personalty, of the estate of Fernando M. Arredondo, deceased, late one of the appellants in this cause; and it appearing to the satisfaction of the court, that the said Fernando M. Arredondo has departed this life since the pendency of this cause, in this court, it is ordered that, unless such representatives shall become parties to this suit within the first three days of the next term, the said appellee shall be entitled to have this suit dismissed, provided that a copy of this order shall be printed in some newspaper in Tallahassee for three successive weeks, beginning at least sixty days before the next term of the court.

And, afterwards, to wit, on the 10th day of January, A. D. 1837, up to which term there had been no session of said court, the following entry was made upon the record, to wit:

FERNANDO M. ARREDONDO, &c. *Appellants*, *against* MOSES E. LEVY, *Appellee*. } Upon an appeal from the Eastern District, St. Johns county.

The death of Fernando M. Arredondo, the appellant, since the last term of this court, being suggested, it is ordered, on motion in his behalf, that said appeal continue in the name of Charles Robeo, executor of said appellant.

And, afterwards, at the same term, the following entries were made upon the record, with their respective dates, as follows:

23rd January, 1837.

FERNANDO M. ARREDONDO, &c, *Appellants*, *against* MOSES E. LEVY, *Appellee*. } On an appeal from the Eastern District, St. Johns county.

This day came the parties by their attornies, and the cause was partly heard upon the transcript of the record of the appeal aforesaid and arguments of counsel, and is continued until to-morrow for a further hearing thereof.

January 24th, 1837.

FERNANDO M. ARREDONDO, &c. *Appellants*, } Upon an appeal from
against } the Eastern District,
MOSES E. LENY, *Appellee*. } St. Johns county.

This day came the parties by their attornies, and the cause was still further heard upon the transcript of the record of the appeal aforesaid and arguments of counsel, and is continued until to-morrow for a further hearing thereof.

January 25th, 1837.

FERNANDO M. ARREDONDO, &c. *Appellants*, } On an appeal from
against } the Eastern District
MOSES E. LEVY, *Appellee*. } St. Johns county.

This day came the parties by their attornies, and the cause was fully heard upon the transcript of the record of the appeal aforesaid, and arguments of counsel, but because the court is not yet advised of its judgment to be given in the premises, time is taken to consider thereof.

And, afterwards, to wit, on the 31st day of January, in the year last aforesaid, the following opinion and decree of the court of appeals was filed in this cause, to wit:

[OPINION.]

In Chancery, Court of Appeals, January term, 1837.

This cause comes up by appeal from the Eastern District of Florida. The complainant below, Moses E. Levy, filed his bill for discovery and relief, against the present appellants, Fernando de la Maza Arredondo and Juan de Entralgo.

The several contracts and agreements, under which the complainant's claim to relief is founded, are set forth in the bill and exhibits at great length and in the decree of the judge below.

Complainant seeks relief in consequence of alleged misrepresentations made to him by the defendant, Arredondo, in the sale of two tracts of land in East Florida, called the St. Johns and Alligator tracts. He alleges that, by a contract entered into on the 3rd of August, 1820, he purchased said lands of said Arredondo, upon representations made by him as to their locality, title, and quality, which representations were subsequently discovered to be wholly erroneous and untrue as regarded the Alligator tract.

He admits, however, that by a subsequent contract, entered into on the 13th July, 1824, compensation was made to him in other lands, for one moiety of the Alligator creek tract, and he now seeks a recision of the original contract, so far as regards the other moiety, for which he alleges no compensation has been made. He also seeks to recover back that part of the consideration alleged to have

been paid for the moiety of the land first mentioned, and a perpetual injunction against a recovery by defendant, Entralgo, on a note given in part payment of the same. The decree rendered on the 10th of Septr., 1830, did, in effect, order and adjudge, that the contract of purchase, as to one moiety of the Alligator creek tract of land, be wholly rescinded and set aside; that the note in the bill and answer mentioned, as having been made and given by the complainant to the defendant, Arredondo, for the sum of 10,875 dollars, be delivered up and cancelled, and the suit instituted on the same, by Entralgo, perpetually enjoined; and that Arredondo pay to complainant, the sum of 7,044 $\frac{25}{100}$, dollars, the amount of the several payments made by complainant to said Arredondo, on account of the moiety of the said Alligator creek tract of land, together with the sum of 3,092 $\frac{72}{100}$ dollars, interest on the same, with costs, &c.

The material question to be considered by this court, is, whether the several contracts of the 3rd Augt., 1820, and of the 13 July, 1824, as evidenced by the deeds of indenture of those dates, constitute one entire contract of purchase, of the whole of the lands embraced in those deeds, to be rescinded or enforced in their entirely; or whether it was equitable in the complainant to claim, and for the court to decree a recision of the contract of sale, as to part of the land conveyed, and to hold the same in force as to the residue.

The court below sustained the latter alternative of this question, and decreed accordingly; and if there was error in that decision, the whole decree is erroneous. If the judgment of the court below, as to the invalidity of the sale of the Alligator creek tract of land, by reason of the mis-description of the same, (and whether that mis-description arose from mistake or design, or from fraud, actual or techenical,) had been formed from a consideration of the contract of the 3rd of August, 1820, and in the absence of any subsequent contract between the parties, this court would have been inclined to concur with the opinion of the judge of the superior court.

Yet now, on the construction of the deed of the 3rd of August alone, unaffected by any subsequent agreement of the parties, one member of this court is inclined to the opinion that a very serious question would arise, whether the purchase of the two tracts of land, on the St. Johns, and on Alligator creek, is to be considered as one and entire, to be resciended or enforced "*in toto*," or several, distinct, and independent, and susceptible of being separately enforced or rescinded.

No such question has, however, arisen in this cause, and, as its decision is not necessary at this time, its further consideration will be waived. But in relation to the Alligator creek tract alone, or the construction of the deed of the 3d of August, 1820, and the exhibits and proofs relating to the same, the opinion of the judge below, that it created no valid binding contract of sale, because of the mistake and misrepresentation under which the purchaser acted, and because of the non-existence of the land, as described by the vendor, is held by this court to be fully sustained by the law and the facts of the case. But in not giving proper effect to the contract and deed of the 13th

July, 1824, this court holds that the court below erred, and its decree pronounced, in consequence, to be wholly erroneous.

By the contract and deed of the 3d August, 1820, made at Havana, where both parties then resided, the complainant purchased from defendant, Arredondo, for a valuable consideration, two tracts of land, the one lying on the St. Johns river, containing 14,500 acres, the other alleged to lie on Alligator creek, containing 38,400 acres. The deed, in its terms, expresses one gross sum for both tracts, but the bill charges, and the answer admits, separate and distinct sums as being ascertained and paid for such respectively.

Now, conceding that this contract of purchase of the Alligator creek tract, was so far separate as to be the subject for the action of a court of equity, apart from the purchase of the St. Johns' tract, (against the fairness and validity of which, no objection existed;) conceding also, that the misdescription as to the survey and location of the same, constituted such a case of mistake or misrepresentation, as would justify a court of equity in vacating and rescinding the purchase, it cannot be denied that it was competent for the parties themselves to contract anew, and to settle their own disputes and difficulties in their own way. It was competent for them to rescind or affirm the same, in whole or in part, and to stipulate in a new contract on such terms, as to them might seem proper.

Such appears to have been their object and intention by the contract and deed of exchange of the 13th of July, 1824, made between the complainant Levy, and Joseph M. Arredondo, as attorney for the defendant, F. M. Arredondo, sen'r. Complainant alleges in his bill, that "vague and indefinite reports had, by the month of July, 1824, reached him, which created a doubt in his mind, as to the actual survey and location of the said Alligator creek land;" and he subsequently adds, "though, at the time of the execution of the indenture of exchange, he had no information as to the non-existence of the Alligator creek land, which was certain or definite in its nature, or which could be relied on as authentic."

In another part of his bill, he alleges, that so early as the beginning of January, 1822, "difficulties and doubts had arisen, as to the regularity and validity of the *grant* for the said pretended Alligator creek land, which gave him considerable uneasiness," and which led to an agreement on the 22d of January of that year, between complainant and F. M. Arredondo, junior, alleging himself to be the agent of his father, the defendant in the bill. This last mentioned agreement was never recognized or assented to by defendant, and being declared to be void and inoperative, by the subsequent deed of the 13th July, 1824, can have no bearing on the case.

The fact is referred to them, that so early as January, 1822, the regularity and validity of the *grant itself*, had been involved in doubt and difficulty—and that subsequently, the verity of the "survey and location," and the very "existence" of the land, had, with complainant, become involved in equal doubt. These doubts, however, vague and indefinite, the reports, which created them, had the natural effect of putting the party on the alert to secure himself against their possi-

ble truth. Such, he avers to have been the motive, which induced both him and the defendant Arredondo, to enter into the arrangement of July 13th, 1824.

It is somewhat remarkable that a document, so important in the consideration of this cause, should no where appear amongst the exhibits or proofs in the cause. All that the court can know of this deed of exchange, must be taken from the description of it in the bill, and as admitted in the answer. The object and effect of it, is there stated to be, "for an exchange of a moiety of the said Alligator creek land for an equal quantity of land in Alachua, in said territory, owned, or alleged to be owned, by the said F. M. Arredondo, senior." The deed being described as an indenture, might have been exhibited by either party, and doubtless would have been offered in proof, if its terms had been variant from the description given of it.

It further appears, from the statement in the bill, that then, and after, the complainant urged upon the defendant Arredondo, but without effect, a similar exchange for the other moiety of the Alligator land.

Certainly this court could, with more confidence, have pronounced upon the meaning, intent, and effect, of this deed, if the parties had spread the same "in extenso" upon the record. But deciding upon the information of its contents, disclosed to us, we hold that it wrought a material change in the condition of the parties, and upon the antecedent contract of the 3d of August, 1820. It was an indenture of exchanges, by which complainant conveys one half of the Alligator tract for an equal quantity of other lands conveyed to him by defend dant, Arredondo, in Alachua. Obviously such an exchange would seem to have affirmed, instead of invalidating the title and transfer of conveyance of the other moiety of the Alligator land. It dealt with and treated that land, as something having a potential existence and value, and as the subject-matter of an exchange. But viewed also, in the light of an amicable arrangement of existing disputes and difficulties between the parties, as presented by the complainant himself, it is then to be regarded in the character of a compromise, in which the parties make mutual concessions for the sake of peace.

In July, 1824, the situation of the parties had undergone a material change. Since the epoch of their first contract in Havana, nearly four years had elapsed; and complainant by a removal to Florida, and a residence of some years in the district where the land was situated, had been in a condition to prosecute enquiries, as to the locality and quality of the lands. According to his own shewing, his doubts and suspicions had been excited as to both these particulars, as well as in reference to the regularity and validity of the grant, for some years anterior to this arrangement.

A contract thus made, in a spirit of mutual concession, on a debateable matter, after full time and opportunity for investigation, cannot reasonably be construed to favor only one party. It no where appears that the defendant, Arredondo, ever admitted either the invalidity or impolarity of the grant of the Alligator tract, the falsehood

of the alleged survey, or the non-existence of the land, as described therein.

In truth, up to the date of that contract of the 13th of July, 1824, complainant himself only entertained *doubts* on these points, arising from vague and indefinite reports. For, soon after that period, he represents himself as employing an agent, conjointly with the attorney of the defendant, for the purpose of resolving those doubts. And, even now, if this court be prepared to say, that the survey and location of the land, are fictitious and unreal, can it pronounce that the grant itself is irregular and invalid, and destitute of all value? This would be to decide a matter incidentally, which it belongs to another tribunal to adjudicate.

The grant then, of the Alligator creek tract, was a fair subject of bargain and sale and exchange; and, even if there had been such misrepresentation or misdescription in the sale of it, as to justify the complainant in insisting upon a recision of the contract, for its purchase, it was competent for him to waive that right, wholly or in part, and by a subsequent contract, after full advisement and consideration, to purge the original contract of the consequences of the imputed fraud or misrepresentation.

Such, we hold to have been the effect of the agreement and indenture of July, 1824. That indenture superinduced a new contract, compounded of the stipulations of the agreements of 1820 and 1824, changing, but not annulling, the terms of the first in date, and purging it of all its imperfections. But even if it were otherwise, as to the obligatory effect of these two contracts upon the complainant: if the first contract remained with all its imperfections on its head, not purged or compensated for, by the last contract, and relievable from in equity, we hold it to be clear, that they are so far dependent or joint, that if the complainant seek to avoid and annul the first, he must abandon the last. They are portions of one entire contract, as contemplated by the defendant, and the complainant may not solicit to perform one part, and reject the other. To such an offer defendant may well object "non hocce in fœdera veni." Such is not my contract. "I never designed to exchange an equal quantity of the Alachua tract for a moiety of the Alligator creek land, but with a view to the final settlement of subsisting disputes, and for the purpose of buying my peace. Such, in effect, he does say in his answer, and all the facts of the case justify this language. Any other construction given to those deeds, would be for the *court* to make a contract, not contemplated by all the parties.

To enable a court to pronounce that the exchange by Arredondo of an equal quantity of the Alachua land for a moiety of the Alligator tract was not by him designed to be a final settlement of the whole controversy, but merely as a part, satisfaction for the same, growing out of the contract of August 1820, it should be prepared to assert, not only that the contract was inequitable and voidable, such as should be rescinded, but that Arredondo knew the fact and acquiesced in that conclusion. But further, the court must also be prepared to say, that these several tracts of land were of equal value, acre for acre, or that the parties so regarded them.

Can the court undertake to pronounce upon any one of these questions, except the first? viz: that the sale of the Alligator creek land in August 1820, was so far affected by fraud or misrepresentation, as to constitute it a case for recission. This the court may say, but this only enables it to vacate the contract, and to decree damages or compensation in money, but not to decree any other measure of redress.

To make a contract there must be mutual consent. And where is the evidence that Arredondo ever consented to exchange acre for acre, to the extent of one moiety of the Alligator land, and to admit his liability to make compensation for the other moiety? There is no such evidence, and all the facts of the case reppudiate the supposition. To make it probable, the value of the lands should be proved to have been the same intrinsically, or such at least should be shewn to have been the estimate placed upon them by Arredondo. Of all this, there is no evidence whatever.

If these arguments fail to establish the conclusion at which this court has arrived, it may avoid the mortification of such failure, by ascribing it to the impossibility of making some propositions more plain than they are in these simple statements.

We hold, then, that the bill, in seeking partial rescision of an entire contract, ought not to have been sustained. That before the complainant could be entitled to call upon a court of equity, to rescind the contract, as to the one moiety of the Alligator creek tract, and to decree him a return of the consideration money, alleged to have been paid for the same, he should have tendered to reconvey the Alachua lands received in exchange for the other moiety; that he should have prayed for a rescision of the contract "in toto." This he does not ask, and without a prayer to that effect, it is not competent for the court to decree it.

The demurrer to the bill, by the defendants in the court below, should have been sustaned, for the reasons above expressed, which go to the whole merits of the complainant's case, as set forth in the bill.

The reversal of the decree, will of course cause a dissolution of the injunction made perpetual against the recovery by Entralgo, in the suit on the note referred to in the bill. So far as that injunction was granted on the grounds set forth in the decree, of a failure of consideration for which note was given, its dissolution is without the contemplation of the court, and must be final and irreversable, so long as this judgment remains irreversed. But upon another ground of equity set forth in the bill, but not sustained by the decree of the court below, viz: a full satisfaction of that note, by payments made to Arredondo, and a transfer of the note after due to Entralgo. If such a case can be made out, it will constitute a distinct subsisting ground of equity, to be available to the complainant on a proper bill of complaint, to be exbibited to the court.

DECREE.

This court being of opinion that the decree of the superior court

of the eastern district of Florida, ought to be reversed; it is therefore ordered, adjudged, and decreed, that the decree of the said court, in the original suit, wherein the appellee was complainant, and the appellants were defendants, be and the same is hereby reversed; and that the bill in the original suit be dismissed, and that the complainant therein, pay to the defendants their costs in the court below to be taxed. And it is further ordered, adjudged, and decreed, that the proceedings removed into this court, be remitted to the court below, to the end that the decree of this court be carried in full effect.

And, afterwards, to wit, on the ninth day of February, in the year of our Lord one thousand eight hundred and thirty-seven, the following entry was made of record in this case, to wit:

FERNANDO M. ARREDONDO, AND JUAN DE ENTRALGO *Appellants.* *against* MOSES E. LEVY, *Appellee.* } Upon an appeal from the Eastern District, St. John's county.

The counsel for the appellee, this day presented to the court a petition for a rehearing, which was filed, and after argument of counsel was overruled and refused: Whereupon, the appellee in this case, prayed in open court, an appeal from the decree of this court in said case, and each and every part thereof, to the Supreme Court of the United States; which is granted and allowed upon the following conditions, viz: The appellant, Levy, entering into the usual bond and security, in such cases provided, within sixty days, in the sum of five thousand dollars. But the appeal is not to operate as a supersedeas to the suit pending in the superior court of St. John's county, in the name of Entralgo vs. Levy, until judgment is entered in that cause, and bond and security in double the amount of that judgment, to secure its eventual payment, if said judgment should not be reversed on said appeal. The latter bond to be approved of by the judge of the superior court of St. John's county.

And, afterwards, to wit, on the 5th day of April, A. D. 1837. came Moses E. Levy, by his attorney, and filed his appeal bond with the clerk of this court, of which the following is a copy, to wit:

Know all men by these presents, that we, Moses E. Levy and Richard K. Call, Thomas Batzell and Robert H. Berry, are held and firmly bound unto Charles Robeo, administrator of Fernando de la Maza Arredondo, and Juan de Entralgo, in the penal sum of five thousand dollars, to the payment whereof, we bind ourselves, our heirs, executors, administrators, jointly and severally, firmly by these presents, signed and sealed this 5th day of April, 1837.

The condition of this obligation is such, that whereas the said Moses E. Levy, has obtained an appeal to the Supreme Court of the United States, from a decision of the court of appeals of the territory of Florida, in a case lately depending thereon by appeal from the superior court of St. John's county, wherein said Levy was complainant, and said Arredondo and Entralgo were defendants; which